



LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: July 15, 2009

Time: Closed Session 6:15 p.m.
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

- a) Threatened Litigation: Government Code §54956.9(b); One Application; Potential Workers Compensation Claim by Michael Gold against City of Lodi (DOI: 11/3/07)
- b) Actual Litigation: Government Code §54956.9; One Application; Lance Hayden v. City of Lodi; WCAB #STK 214337 (3/10/08)
- c) Actual Litigation: Government Code §54956.9; One Application; Tim Bogetti v. City of Lodi, WCAB Case Number STK 0208706 (9/14/04)
- d) Actual Litigation: Government Code §54956.9; Four Applications; John Gail v. City of Lodi, WCAB Case Numbers STK 183128, STK 185784, STK 185786, and STK 183181 (CT 7/18/02)

C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll call

B. Invocation – Barbara Taylor, Lodi Police Chaplain

C. Pledge of Allegiance

D. Presentations

D-1 Awards

- a) Presentation of Firefighter of the Year 2008 Plaque to Fire Engineer Mike Woznick (FD)

D-2 Proclamations

- a) Parks and Recreation Month (PR)

D-3 Presentations

- a) Presentation of Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting (CM)

E. Consent Calendar (Reading; Comments by the Public; Council Action)

- E-1 Receive Register of Claims in the Amounts of \$1,900,190.42 and 2,299,978.84 (FIN)

- E-2 Approve Minutes (CLK)
 - a) June 16, 2009 (Shirtsleeve Session)
 - b) June 17, 2009 (Regular Meeting)
 - c) June 17, 2009 (Special Meeting)
 - d) June 23, 2009 (Shirtsleeve Session)
 - e) June 30, 2009 (Shirtsleeve Session)
 - f) July 1, 2009 (Regular Meeting)
 - g) July 7, 2009 (Shirtsleeve Session)
- Res. E-3 Adopt Resolution Rejecting all Bids and Authorizing Advertisement for Bids for the Annual Tree Trimming Contract (Power Line Clearing) for Electric Utility Department (\$375,000) (EUD)
- E-4 Authorize Lodi Police Department to Accept Donation of 2001 Ford F-150 Van from Ford Construction Company, Inc., of Lodi (PD)
- Res. E-5 Adopt Resolution Awarding Contract for Grape Bowl Americans with Disabilities Act Construction Project to ICE Builders, Inc., of Rancho Cordova (\$283,039), and Appropriate Funds as Recommended (PW)
- Res. E-6 Adopt Resolution Awarding Contract for Asphalt Materials for Fiscal Year 2009-10 to Granite Construction Company, of Stockton (\$28,791) (PW)
- E-7 Accept Improvements under Contract for School Street and Spruce Street Wastewater Pipe Improvement Project (PW)
- E-8 Accept Improvements under Contract for Site Improvements at Lodi Lake Park, 1101 West Turner Road (PR)
- E-9 Approve Grant Funding for 2009-10 as Submitted by the Lodi Arts Commission (COM)
- E-10 Approve Proposed Expenditure Program for Lodi's Share of the 2009 Edward Byrne Memorial Justice Assistance Grant (PD)
- Res. E-11 Adopt Resolution Amending the City of Lodi Drug and Alcohol Testing Policy and Drug and Alcohol Testing Procedure in Accordance with the Federal Transit Administration Drug and Alcohol Program Requirements (CM)
- Res. E-12 Adopt Resolution Authorizing Charter Service for the Listed Annual Events in Accordance with Charter Policy (PW)
- Res. E-13 Adopt Resolution Establishing Policy Governing the Receipt and Distribution of Tickets and/or Passes (CA)
- E-14 Consent to Continued Representation of City of Lodi and Northern California Power Agency – Lodi Meter Maintenance (CA)
- Res. E-15 Adopt Resolution Renewing Line of Credit with Farmers and Merchants Bank (\$3,000,000) at No Cost to the City of Lodi for the Lodi Electric Utility through June 30, 2010 (CM)
- Res. E-16 Adopt Resolution Setting the Pay Rate for the Interim Fire Chief (CM)
- E-17 Set Public Hearing for August 5, 2009, to Consider the Reallocation of Available Community Development Block Grant and HOME Program Funding to Eden Housing, Inc. for an Affordable Senior Housing Project (CD)

F. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

G. Comments by the City Council Members on Non-Agenda Items

H. Comments by the City Manager on Non-Agenda Items

I. Public Hearings

Res. I-1 Public Hearing and Adopt Resolution Adjusting Wastewater Rates (PW)

J. Communications

J-1 Claims Filed Against the City of Lodi – None

J-2 Appointments

a) Appointments to the Greater Lodi Area Youth Commission (Adult Advisors):
David Molvik and Joseph Price (CLK)

J-3 Miscellaneous – None

K. Regular Calendar

K-1 Council Direction Requested Regarding Response to the San Joaquin County Board of Supervisors for Armstrong Road Agricultural/Cluster Zoning Classification (CM)

NOTE: This item is carried over from the meeting of 6/3/09

K-2 Provide Direction Regarding Lease Extension at 100 East Pine Street (Lodi Adopt-A-Child) (CM)

K-3 Notice of Cost to Grant Two Years Service Credit under Government Code Section 20903 (CM)

K-4 Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$6,890) (CA)

L. Ordinances – None

M. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Present "Firefighter of the Year 2008" Plaque to Fire Engineer Mike Woznick (FD)
MEETING DATE: July 15, 2009
PREPARED BY: Kevin Donnelly, Interim Fire Chief

RECOMMENDED ACTION: Presentation

BACKGROUND INFORMATION: Chief Donnelly will present the "Firefighter of the Year 2008" plaque to Fire Engineer Mike Woznick.

FISCAL IMPACT: None

FUNDING AVAILABLE: None Required

Kevin Donnelly, Interim Fire Chief

KD/lh

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

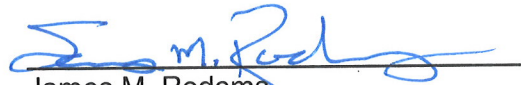
AGENDA TITLE: July is Parks and Recreation Month
MEETING DATE: July 15, 2009
PREPARED BY: Interim Parks and Recreation Director

RECOMMENDED ACTION: Presentation

BACKGROUND INFORMATION: A Proclamation will be presented by Mayor Hansen to representatives of the Lodi Parks and Recreation Department proclaiming the month of July as Parks and Recreation Month.

FISCAL IMPACT: None

FUNDING: None required


James M. Rodems
Interim Parks and Recreation Director

JMR:tl

cc: City Attorney

APPROVED: _____
Blair King, City Manager



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Presentation of Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting

MEETING DATE: July 15, 2009

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Mayor Hansen present Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting.

BACKGROUND INFORMATION: The City of Lodi has been awarded the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association of the United States and Canada.

The award represents a significant achievement by the government and its management. It reflects the commitment of the governing body and staff to meeting the highest principles of financial reporting. The award program was instituted to encourage all government units to prepare and publish an easily readable and understandable comprehensive annual financial report covering all funds and financial transactions of the government during the fiscal year. In order to receive the award, the entity had to satisfy nationally recognized guidelines for effective presentation of financial information.

When a Certificate of Achievement for Excellence in Financial Reporting award is granted to an entity, a Certificate of Recognition is also presented to the individuals designated as being primarily responsible for its having achieved the award. This Certificate of Recognition is being presented to:

Ruby R. Paiste, Financial Services Manager
Cory Wadlow, Supervising Accountant
Lourdes "Odette" Bondoc, Accountant II

FISCAL IMPACT: None.

FUNDING AVAILABLE: N/A

Jordan Ayers
Deputy City Manager

JA/jmr

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Register of Claims Dated June 4, and June 11, 2009 in the Total Amount of \$1,900,190.42

MEETING DATE: July 1, 2009

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$1,900,190.42.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$1,900,190.42 dated 06/04/09, and 06/11/09. Also attached is Payroll in the amount of \$1,218,209.29.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Blair King, City Manager

Accounts Payable
Council Report

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Amount

As of Thursday	Fund	Name	Amount
06/04/09	00100	General Fund	357,065.80
	00123	Info Systems Replacement Fund	12,773.51
	00160	Electric Utility Fund	2,494.86
	00161	Utility Outlay Reserve Fund	5,198.16
	00164	Public Benefits Fund	3,780.00
	00170	Waste Water Utility Fund	9,715.93
	00172	Waste Water Capital Reserve	435.00
	00173	IMF Wastewater Facilities	1,038.63
	00180	Water Utility Fund	415.79
	00181	Water Utility-Capital Outlay	7,499.93
	00182	IMF Water Facilities	1,038.63
	00210	Library Fund	1,239.38
	00211	Library Capital Account	5,104.74
	00260	Internal Service/Equip Maint	17,761.56
	00270	Employee Benefits	11,933.45
	00300	General Liabilities	10,379.00
	00310	Worker's Comp Insurance	58,503.17
	00321	Gas Tax	292.22
	00326	IMF Storm Facilities	1,038.62
	00332	IMF(Regional) Streets	1,038.62
	00345	Community Center	4,490.18-
	00346	Recreation Fund	9,224.44
	00501	Lcr Assessment 95-1	302.76
	01211	Capital Outlay/General Fund	19,724.01-
	01212	Parks & Rec Capital	14,297.58
	01214	Arts in Public Places	14,000.00
	01410	Expendable Trust	11,759.03
Sum			534,116.62
	00184	Water PCE-TCE-Settlements	84.00
Sum			84.00
Total for Week			
Sum			534,200.62

Accounts Payable
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As of Thursday	Fund	Name	
06/11/09	00100	General Fund	656,367.67
	00122	Equipment Replacement Fund	30.48
	00160	Electric Utility Fund	24,840.05
	00161	Utility Outlay Reserve Fund	12,388.81
	00164	Public Benefits Fund	6,823.91
	00166	Solar Surcharge Fund	49,579.40
	00170	Waste Water Utility Fund	21,766.88
	00171	Waste Wtr Util-Capital Outlay	900.00
	00172	Waste Water Capital Reserve	817.19
	00173	IMF Wastewater Facilities	1,008.22
	00180	Water Utility Fund	13,782.99
	00181	Water Utility-Capital Outlay	15,005.32
	00182	IMF Water Facilities	1,749.96
	00210	Library Fund	3,484.50
	00211	Library Capital Account	3,018.65
	00234	Local Law Enforce Block Grant	3,808.67
	00235	LPD-Public Safety Prog AB 1913	60.96
	00260	Internal Service/Equip Maint	27,535.59
	00270	Employee Benefits	441,401.19
	00321	Gas Tax	239.29
	00340	Comm Dev Special Rev Fund	2,629.73
	00345	Community Center	17,282.66
	00346	Recreation Fund	1,892.24
	01211	Capital Outlay/General Fund	4,717.87
	01212	Parks & Rec Capital	1,841.20
	01250	Dial-a-Ride/Transportation	2,721.65
	01252	Transit-Prop. 1B	5,437.50
	01410	Expendable Trust	11,109.78
Sum			1,332,242.36
	00184	Water PCE-TCE-Settlements	210.00
	00190	Central Plume	33,537.44
Sum			33,747.44
Total for Week			
Sum			1,365,989.80

Council Report for Payroll

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Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	05/31/09	00100	General Fund	765,497.84
		00160	Electric Utility Fund	157,725.25
		00164	Public Benefits Fund	4,976.05
		00170	Waste Water Utility Fund	82,778.30
		00180	Water Utility Fund	1,438.96
		00210	Library Fund	28,539.36
		00235	LPD-Public Safety Prog AB 1913	1,957.58
		00260	Internal Service/Equip Maint	20,412.10
		00321	Gas Tax	49,657.20
		00340	Comm Dev Special Rev Fund	25,495.33
		00345	Community Center	26,489.50
		00346	Recreation Fund	47,057.57
		01250	Dial-a-Ride/Transportation	6,184.25
Pay Period Total:				
Sum				1,218,209.29



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive Register of Claims Dated June 18, and June 25, 2009 in the Total Amount of \$2,299,978.84

MEETING DATE: July 15, 2009

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$2,299,978.84.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$2,299,978.84 dated 06/18/09, and 06/25/09. Also attached is Payroll in the amount of \$1,283,274.19.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Blair King, City Manager

Accounts Payable
Council Report

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As of Thursday	Fund	Name	Amount
06/18/09	00100	General Fund	427,821.39
	00123	Info Systems Replacement Fund	213.15
	00160	Electric Utility Fund	27,879.58
	00161	Utility Outlay Reserve Fund	2,140.62
	00164	Public Benefits Fund	4,142.35
	00170	Waste Water Utility Fund	51,902.90
	00171	Waste Wtr Util-Capital Outlay	21,507.96
	00172	Waste Water Capital Reserve	6,028.57
	00173	IMF Wastewater Facilities	2,760.00
	00180	Water Utility Fund	5,993.38
	00181	Water Utility-Capital Outlay	8,952.46
	00210	Library Fund	37,162.08
	00211	Library Capital Account	3,408.24
	00260	Internal Service/Equip Maint	18,080.48
	00270	Employee Benefits	36,419.98
	00300	General Liabilities	1,689.35
	00310	Worker's Comp Insurance	8,875.00
	00321	Gas Tax	28,096.19
	00325	Measure K Funds	24,337.96
	00340	Comm Dev Special Rev Fund	4,966.08
	00345	Community Center	8,308.91
	00346	Recreation Fund	5,013.20
	01212	Parks & Rec Capital	19,901.19
	01218	IMF General Facilities-Adm	49,403.35
	01250	Dial-a-Ride/Transportation	15,376.74
	01410	Expendable Trust	13,323.95
Sum			833,705.06
Total for Week			
Sum			833,705.06

Accounts Payable
Council Report

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As of Thursday	Fund	Name	Amount
06/25/09	00100	General Fund	657,100.87
	00130	Redevelopment Agency	169,801.57
	00160	Electric Utility Fund	18,386.77
	00161	Utility Outlay Reserve Fund	7,105.23
	00164	Public Benefits Fund	21,273.08
	00170	Waste Water Utility Fund	31,883.40
	00171	Waste Wtr Util-Capital Outlay	9,819.49
	00172	Waste Water Capital Reserve	3,642.11
	00180	Water Utility Fund	18,354.04
	00181	Water Utility-Capital Outlay	9,882.57
	00210	Library Fund	1,421.65
	00211	Library Capital Account	36,536.13
	00260	Internal Service/Equip Maint	40,537.48
	00320	Street Fund	238.07
	00321	Gas Tax	7,042.01
	00325	Measure K Funds	638.97
	00345	Community Center	5,620.54
	00346	Recreation Fund	9,940.51
	00509	L&L Dist Z8-Vintage Oaks	677.50
	01211	Capital Outlay/General Fund	32,874.39
	01212	Parks & Rec Capital	573.76
	01218	IMF General Facilities-Adm	11,386.72
	01250	Dial-a-Ride/Transportation	334,145.95
	01410	Expendable Trust	11,947.37
Sum			1,440,830.18
	00184	Water PCE-TCE-Settlements	2,083.58
	00190	Central Plume	23,360.02
Sum			25,443.60
Total for Week			
Sum			1,466,273.78

Council Report for Payroll

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Date - 06/30/09

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	06/14/09	00100	General Fund	766,498.90
		00160	Electric Utility Fund	151,734.72
		00164	Public Benefits Fund	5,354.43
		00170	Waste Water Utility Fund	85,492.85
		00180	Water Utility Fund	1,539.10
		00210	Library Fund	33,025.54
		00235	LPD-Public Safety Prog AB 1913	2,635.15
		00260	Internal Service/Equip Maint	20,469.61
		00321	Gas Tax	50,292.39
		00340	Comm Dev Special Rev Fund	26,982.42
		00345	Community Center	30,517.71
		00346	Recreation Fund	57,413.37
		01250	Dial-a-Ride/Transportation	6,740.10
Pay Period Total:				
Sum				1,238,696.29
Retiree	07/31/09	00100	General Fund	44,577.90
Pay Period Total:				
Sum				44,577.90



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Minutes
a) June 16, 2009 (Shirtsleeve Session)
b) June 17, 2009 (Regular Meeting)
c) June 17, 2009 (Special Meeting)
d) June 23, 2009 (Shirtsleeve Session)
e) June 30, 2009 (Shirtsleeve Session)
f) July 1, 2009 (Regular Meeting)
g) July 7, 2009 (Shirtsleeve Session)

MEETING DATE: July 15, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) June 16, 2009 (Shirtsleeve Session)
b) June 17, 2009 (Regular Meeting)
c) June 17, 2009 (Special Meeting)
d) June 23, 2009 (Shirtsleeve Session)
e) June 30, 2009 (Shirtsleeve Session)
f) July 1, 2009 (Regular Meeting)
g) July 7, 2009 (Shirtsleeve Session)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through G.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

Attachments

APPROVED: _____
Blair King, City Manager

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JUNE 16, 2009**

The June 16, 2009, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled due to the lack of a quorum.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 17, 2009**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of June 17, 2009, was called to order by Mayor Hansen at 6:31 p.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

a) Threatened Litigation: Government Code §54956.9(b); One Case; Potential Suit by James Gribaudo against City of Lodi Based on Personal Injury

b) Threatened Litigation: Government Code §54956.9(b); One Case; Potential Suit by Sean Angoco against City of Lodi Based on Personal Injury

C-3 Adjourn to Closed Session

At 6:31 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:36 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:01 p.m., Mayor Hansen reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), the City Council provided authorization to settle the claim in the amount of \$7,235.

Item C-2 (b) was not discussed.

A. Call to Order / Roll call

The Regular City Council meeting of June 17, 2009, was called to order by Mayor Hansen at 7:01 p.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Invocation - Pastor Bill Cummins, Bear Creek Community Church

C. Pledge of Allegiance

D. Presentations

D-1 Awards - None

D-2 Proclamations - None

D-3 Presentations

a) Presentation of Certificate of Recognition to A&W Restaurants Inc. for its 90th Anniversary

Mayor Hansen presented a Certificate of Recognition to Peter Knight with A&W in celebration of the 90th Anniversary of A&W Restaurants Inc.

b) Presentation of Resolution of Appreciation to Retiring Fire Chief Mike Pretz

Mayor Hansen presented a Resolution of Appreciation to Fire Chief Mike Pretz who is retiring from the City of Lodi after nine years of dedicated service to the City of Lodi and its citizens.

c) Recognition of the City of Lodi for Being Awarded Employer of the Year ~ Large Company by the San Joaquin Mayors' Committee for Employment of People with Disabilities

Following introductory comments by City Manager King regarding the City's recognition by the San Joaquin Mayors' Committee for Employment of People with Disabilities, Armando Ayala, Program Manager with United Cerebral Palsy (UCP), thanked and recognized the City of Lodi for utilizing the UCP Program, which provides meaningful work for the disabled.

E. Consent Calendar (Reading; Comments by the Public; Council Action)

Council Member Johnson made a motion, second by Council Member Mounce, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

E-1 Receive Register of Claims in the Amount of \$5,117,873.48 (FIN)

Claims were approved in the amount of \$5,117,873.48.

E-2 Approve Minutes (CLK)

The minutes of May 20, 2009 (Regular Meeting), June 2, 2009 (Shirtsleeve Session), June 2, 2009 (Special Meeting), June 3, 2009 (Regular Meeting), June 9, 2009 (Shirtsleeve Session), and June 10, 2009 (Special Meeting) were approved as written.

E-3 Report of Sale of Surplus Equipment (PW)

Received report of the sale of surplus equipment.

E-4 Adopt Resolution Awarding the Purchase of Troubleman Bucket Truck to Altec Industries Inc., of Dixon, California (\$84,715) (EUD)

Adopted Resolution No. 2009-78 awarding the purchase of troubleman bucket truck to Altec

Industries Inc., of Dixon, California, in the amount of \$84,715.

- E-5 Adopt Resolution Awarding Annual Contract for Curb, Gutter, and Sidewalk Replacement to Jeff Case Construction, of Galt (\$46,570) (PW)

Adopted Resolution No. 2009-79 awarding the annual contract for curb, gutter, and sidewalk replacement to Jeff Case Construction, of Galt, in the amount of \$46,570.

- E-6 Adopt Resolution Approving the Master Lease Agreement with the Lodi Grape Festival and National Wine Show Association for Use of Various Festival Ground Facilities (\$21,000) (PR)

Adopted Resolution No. 2009-80 approving the Master Lease Agreement with the Lodi Grape Festival and National Wine Show Association for use of various Festival ground facilities in the amount of \$21,000.

- E-7 Adopt Resolution Authorizing the City Manager to Execute an Agreement with the Boosters of Boys/Girls Sports Organization for Concession Operations (PR)

Adopted Resolution No. 2009-81 authorizing the City Manager to execute an agreement with the Boosters of Boys/Girls Sports Organization for concession operations.

- E-8 Adopt Resolution Approving a Second One-Year Extension of Tree Trimming 2007 Contract with West Coast Arborists, Inc., of Stockton (\$40,000) (PW)

Adopted Resolution No. 2009-82 approving a second one-year extension of tree trimming 2007 contract with West Coast Arborists, Inc., of Stockton, in the amount of \$40,000.

- E-9 Adopt Resolution Approving Contracts for Fiscal Year 2009-10 with United Cerebral Palsy of San Joaquin, Amador, and Calaveras Counties, of Stockton, for Downtown Cleaning (\$46,872) and Transit Facility Cleaning (\$38,456) (PW)

Adopted Resolution No. 2009-83 approving contracts for fiscal year 2009-10 with United Cerebral Palsy of San Joaquin, Amador, and Calaveras Counties, of Stockton, for downtown cleaning in the amount of \$46,872 and transit facility cleaning in the amount of \$38,456.

- E-10 Adopt Resolution Authorizing the City Manager to Execute Task Order No. 2 for Wastewater Utility Financial Planning, Rate Setting, and Capacity Charge Study with The Reed Group, Inc., of Sacramento (\$48,100), and Appropriating Funds (\$60,000) (PW)

Adopted Resolution No. 2009-84 authorizing the City Manager to execute Task Order No. 2 for Wastewater Utility Financial Planning, Rate Setting, and Capacity Charge Study with The Reed Group, Inc., of Sacramento, in the amount of \$48,100, and appropriating funds in the amount of \$60,000.

- E-11 Adopt Resolution Authorizing the City Manager to Execute Master Professional Services Agreement and Task Order No. 1 of the City of Lodi Soil and Groundwater Remediation Projects with Stantec Consulting Corporation, of Rancho Cordova (\$70,981) and Appropriating Funds (\$100,000) (PW)

This item was pulled for further discussion by Ann Cerney, a member of the public.

Public Works Director Wally Sandelin provided a brief overview of the proposed action related to remediation of groundwater contamination as required by the State.

In response to Ms. Cerney, Mr. Schwabauer stated the primary issue is past practice at White Slough when sludge was removed and contaminants were disbursed on neighboring soil. Mr. Schwabauer stated it is a minor issue that is being addressed through the remediation.

Mayor Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2009-87 authorizing the City Manager to execute Master Professional Services Agreement and Task Order No. 1 of the City of Lodi Soil and Groundwater Remediation Projects with Stantec Consulting Corporation, of Rancho Cordova, in the amount of \$70,981 and appropriating funds in the amount of \$100,000.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

E-12 Approve Amendment Extending the Term of the Northeastern San Joaquin County Groundwater Banking Authority Joint Powers Agreement (PW)

Approved amendment extending the term of the Northeastern San Joaquin County Groundwater Banking Authority Joint Powers Agreement.

E-13 Adopt Resolution Authorizing the City Manager to Execute a Master Confirmation Agreement with J.P. Morgan Ventures Energy Corporation (EUD)

Adopted Resolution No. 2009-85 authorizing the City Manager to execute a Master Confirmation Agreement with J.P. Morgan Ventures Energy Corporation.

E-14 Adopt Resolution Authorizing the City Manager to File Claim for the 2008-09 Transportation Development Act Funds in the Amount of \$2,839,686 from the Local Transportation Fund and \$82,648 from State Transit Assistance (PW)

Adopted Resolution No. 2009-86 authorizing the City Manager to file claim for the 2008-09 Transportation Development Act funds in the amount of \$2,839,686 from the Local Transportation Fund and \$82,648 from State Transit Assistance.

E-15 Adopt Resolution Amending the City of Lodi Drug and Alcohol Testing Policy and Drug and Alcohol Testing Procedure in Accordance with the Federal Transit Administration Drug and Alcohol Program Requirements (CM)

Pursuant to the City Manager, this item was removed in its entirety from the agenda and will be brought back at a future date.

E-16 Adopt Resolution Nominating Representative from the City of Stockton to the Special City Selection Committee for Appointment to the San Joaquin Valley Air Pollution Control District Governing Board (CLK)

This item was pulled for further discussion by Council Member Johnson.

Council Member Johnson outlined his reasoning for not supporting the appointment based on the insufficiency of the selection process and lack of participation in the meetings by the applicant.

Mayor Hansen outlined his reasoning for not supporting the appointment based on concerns he

has been made aware of regarding the ability of the applicant to represent the City in this position.

Ann Cerney spoke in favor of obtaining more information regarding the appointment process and the interest of the applicant in the position.

Council Member Johnson made a motion, second by Mayor Hansen, to not support the nomination from the city of Stockton to the Special City Selection Committee for appointment to the San Joaquin Valley Air Pollution Control District Governing Board.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, and Mayor Hansen

Noes: Council Member Mounce

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

F. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Ann Cerney spoke regarding her concern about condominiums being built near Woodbridge Road at the location of the current mobile home park and the consistency of the proposed development with the City's General Plan and Area of Interest sphere.

G. Comments by the City Council Members on Non-Agenda Items

Council Member Johnson requested staff provide information to the Council regarding the recent adoption of a call fee or annual subscription for emergency services by the city of Tracy.

Council Member Mounce requested that the Parks and Recreation Commission look into adopting a policy for the Lodi Lake Nature Area with respect to usage and gate closures, reported on a recent study for city and county manager compensation, and urged citizens to continue their annual efforts in having block parties for National Night Out.

Mayor Hansen reported on his attendance at the American Public Power Association annual conference, during which the main issues of discussion were the carbon footprint, greenhouse gas emissions, and local control for rate payers and utilities.

H. Comments by the City Manager on Non-Agenda Items

City Manager King stated the issue of manager compensation is of concern to him and his colleagues and suggested the idea of peer review. He stated that, while the field is very competitive and challenging, there is an International City Managers Association Code of Ethics that applies to the compensation issue.

I. Public Hearings

I-1 Public Hearing to Consider Resolution Adopting Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2009-10, and Ordering the Levy and Collection of Assessments (PW)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider resolution adopting Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2009-10, and ordering the levy and collection of assessments.

Senior Civil Engineer Sharon Welch provided a brief presentation regarding the history of the landscape maintenance assessment district in the City of Lodi, the annual report for bookkeeping purposes, the services provided and the related costs, and the proposed staff recommendation.

Council Member Mounce made a motion, second by Council Member Johnson, to adopt Resolution No. 2009-88 adopting Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2009-10, and ordering the levy and collection of assessments.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

J. Communications

J-1 Claims Filed Against the City of Lodi - None

J-2 Appointments

- a) Appointments to the Library Board of Trustees: Caitlin Casey; Lodi Arts Commission: Ben Burgess, Nancy Carey, Jennifer Walth; Lodi Budget/Finance Committee: Bill Russell, Louis Ponick, Steven Reeves; Planning Commission: Bill Cummins, Debbie Olson; and San Joaquin County Commission on Aging: Terri Whitmire; and Direction to Post for Remaining Vacancies on the Library Board of Trustees and the Lodi Budget/Finance Committee (CLK)

Council Member Mounce made a motion, second by Council Member Johnson, to make the following appointments and further direct the City Clerk to post for the remaining vacancies on the Library Board of Trustees and the Lodi Budget/Finance Committee:

APPOINTMENTS:

Library Board of Trustees

Caitlin Casey, term to expire June 30, 2012

Lodi Arts Commission

Ben Burgess, term to expire July 1, 2012

Nancy Carey, term to expire July 1, 2012

Jennifer Walth, term to expire July 1, 2012

Lodi Budget/Finance Committee

Bill Russell, term to expire June 30, 2013

Louis Ponick, term to expire June 30, 2013
Steven Reeves, term to expire June 30, 2013

Planning Commission

Bill Cummins, term to expire June 30, 2013
Debbie Olson, term to expire June 30, 2013

San Joaquin County Commission on Aging

Terri Whitmire, term to expire June 30, 2012

POSTING:

Library Board of Trustees

One vacancy, term to expire June 30, 2012

Lodi Budget/Finance Committee

One vacancy, term to expire June 30, 2013

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

b) Post for One Vacancy on the Lodi Animal Advisory Commission (CLK)

Council Member Mounce made a motion, second by Council Member Johnson, to direct the City Clerk to post for the following vacancy:

Lodi Animal Advisory Commission

Thomas Carleton, term to expire December 31, 2010

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

J-3 Miscellaneous - None

K. Regular Calendar

K-1 Adopt Resolution Authorizing the Harney Lane Alternative to Measure K Railroad Grade Separation Project (CD)

Interim Community Development Director Rad Bartlam provided a brief presentation regarding an overview of the original Measure K strategic plan, railroad safety projects and related costs, the designation of the Lodi Avenue grade separation project, alternatives to the grade separation project including Harney Lane, project designation by the San Joaquin Council of Governments (SJCOG), the request from SJCOG to get the City to reconfirm its commitment to the grade separation project with the Harney Lane alternative, the unanimous approval by the Planning Commission, limited disturbance to the area residents and business owners, and staff recommendation for approval.

In response to Council Member Mounce, Mr. Bartlam stated no homes will be affected by the project because the reserved right of way is sufficient.

In response to Council Member Johnson, Mr. Bartlam stated there is no Harney Lane access for Stockton Street properties as currently proposed in the project because access is through Stockton Street.

In response to Council Member Johnson, Mr. Hansen stated the attitude toward the original Lodi Avenue project by some of the downtown businesses is still the same and they remain in opposition.

Mayor Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2009-89 authorizing the Harney Lane alternative to Measure K Railroad Grade Separation Project.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

K-2 Adopt Resolution Authorizing the City Manager to Allocate a Combined \$169,800 in Public Benefit Program Funds for Five Programs and Authorize the City Manager to Execute Contracts with Five Different Entities to Assist in Managing Programs (EUD)

City Manager King briefly introduced the subject matter of the Lodi Public Benefits Program.

Electric Utility Customer Service and Programs Manager Rob Lechner provided a PowerPoint presentation regarding the public benefits program. Specific topics of discussion included an overview of the public benefit program, what is the public benefits program, state law, components of the program, discretion to expend and allocate public benefits, 2008-09 fiscal year program review, marketing programs, offering of programs, rebates, energy audit program, CARE and SHARE programs, education, residential programs, commercial and industrial programs, energy education and outreach, program contracts, reporting requirements and special projects, 2009-10 program budget, federal stimulus funds, and contact information for citizens.

In response to Council Member Mounce, Mr. Lechner stated the 2.85% set aside amount was established by the State in 1996.

In response to Mayor Hansen, Mr. Lechner stated staff is aware of the SMART meters program, which allows users to receive information on how much energy they are consuming, and it is researching options associated with the same.

In response to Mayor Hansen, Mr. Lechner stated the \$25,000 figure will likely assist 25 commercial and industrial businesses, and possibly 50 to 60 businesses if additional federal stimulus dollars are received.

In response to Council Member Johnson, Mr. Lechner stated the education and outreach programs with the Lodi Unified School District are fully booked for the 2009-10 year and the scheduled teachers are on staff.

In response to Mayor Hansen, Mr. Lechner stated the left over funding remaining from the year is applied local rate discounts or renewable energy resources eligible under the public benefits programs.

In response to Mayor Hansen, Mr. Lechner stated the economy is hurting the benefits program with the larger customers since they are deciding to wait because the amount of the rebate is not sufficient enough to encourage them to spend the additional money on a project.

In response to Council Member Johnson, Mr. Lechner confirmed that other agencies are experiencing the same types of declines in their numbers.

In response to Council Member Johnson, Mr. Lechner and Mr. King stated typically the electric utility is over committed with respect to programs and the main difference in the current year is the supplement of federal stimulus dollars, which will go to a variety of projects within the City. Mr. Lechner stated that what is eligible as a public benefit is typically a moving target and the money could be used for a variety of projects. Mr. King stated it is anticipated that the City will receive the federal stimulus funding because it is non-competitive and one-time grant funds.

In response to Mayor Hansen, Mr. Lechner stated that, if the additional funding is not put toward the geysers, funding for the geysers will need to come from some place else.

In response to Council Member Mounce, Mr. Lechner stated the County, Salvation Army, and Loel Center are working cooperatively with one another on program distribution, including the SHARE program.

Mayor Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2009-90 authorizing the City Manager to allocate a combined \$169,800 in Public Benefit Program funds for five programs and authorizing the City Manager to execute contracts with five different entities to assist in managing programs.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

K-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Lodi Avenue Reconstruction Project and Adopt Resolution Approving Mitigated Negative Declaration 09-01 (PW)

City Manager King provided a brief introduction to the subject matter of Lodi Avenue reconstruction project.

Public Works Director Wally Sandelin provided a presentation regarding the Lodi Avenue reconstruction project and related mitigated negative declaration. Specific topics of discussion included an overview of the proposed project, planned improvements, installation of crosswalks, replacement of curb turns, installation of landscaping, new pergola installation, shorter crossing distances, intersection of Central Avenue, addition of street furniture, unique lighting, art mosaics, and the \$3.4 million budget, which includes funding from various sources.

In response to Mayor Hansen, Mr. Sandelin stated the mosaics will be placed along the entire length of the project.

In response to Council Member Mounce, Mr. Sandelin stated the proposed lights are similar to the existing lights on Cherokee, although a bit different to address cost, burn out, and the need for additional lighting.

In response to Mayor Hansen, Mr. Sandelin stated the \$960,000 was related to the second round of funding with Proposition 1B.

In response to Mayor Hansen, Mr. Sandelin stated construction will occur in Spring to accommodate the time to process federal stimulus.

In response to Council Member Johnson, Mr. Sandelin stated the length of the construction will be approximately 90 days.

In response to Mayor Hansen, Mr. Sandelin stated the street will be open as much as possible, there will be short closures, and communication and outreach efforts with the property owners is strong.

In response to Mayor Hansen, Mr. Sandelin stated the half block crossings allow for safer crossings because of color, enhanced lighting, and shortened crossing distances.

In response to Council Member Mounce, Mr. Sandelin stated the bulb outs on Stockton Street will allow for wider and easier truck turns.

In response to Council Member Mounce, Mr. Sandelin stated the Central Avenue bulb outs do not protrude past the current parking.

In response to Council Member Mounce, Mr. Sandelin stated the pergola is to be installed in July and August and the decision for the location was made a part of the Smart & Final project approval. Mr. King stated that, although there would be cost involved in relocating the pergola from its proposed location, it can be brought back to the City Council if the Council so desires.

In response to Council Member Mounce, Mr. Hansen stated the current pad for the pergola was poured for that project specifically.

Arts Commissioner Ben Burgess provided a brief overview and status of the pergola project concept and approval.

Mayor Hansen made a motion, second by Council Member Johnson, to approve plans and specifications and authorize advertisement for bids for Lodi Avenue Reconstruction Project and adopt Resolution No. 2009-91 approving Mitigated Negative Declaration 09-01.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

K-4 Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$1,999.58) (CA)

In response to Mayor Hansen, Mr. Schwabauer stated a late invoice was submitted on a deposition transcript.

Council Member Mounce made a motion, second by Council Member Johnson, to approve legal expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation in the amount of \$1,999.58, as further detailed in the staff report.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

K-5 Cancel July 1, 2009, Regular City Council Meeting (CLK)

Mayor Hansen made a motion, second by Council Member Johnson, to cancel July 1, 2009, Regular City Council Meeting.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

L. Ordinances - None

M. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 9:24 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 17, 2009**

A. Roll call

The Special City Council meeting of June 17, 2009, was called to order by Mayor Hansen at 9:24 p.m.

Present: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Regular Calendar

B-1 Consider Adopting Resolution Authorizing the City Attorney to Cooperate with the League of California Cities and Other Cities and Counties in Litigation Challenging the Constitutionality of any Seizure by State Government of the City's Street Maintenance Funds (CA)

City Manager King provided a brief presentation regarding the request to adopt a resolution authorizing the City Attorney to engage in litigation to challenge the constitutionality of the State seizing certain funds from local government as proposed by the League of California Cities. Specific topics of discussion included the Highway Users Tax (HUTA) and otherwise known as the Gas Tax, diversion of Proposition 42 funding, a proposal to use a portion of the Gas Tax to pay debt service for Proposition 1B, and the efforts by the cities and the League to strongly oppose the same.

The City Council provided brief general comments about maintaining local government control and opposing any efforts by the State to take away additional funding from cities.

Council Member Mounce made a motion, second by Mayor Hansen, to adopt Resolution No. 2009-77 authorizing the City Attorney to cooperate with the League of California Cities and other cities and counties in litigation challenging the constitutionality of any seizure by State government of the City's Street Maintenance funds.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, and Mayor Hansen

Noes: None

Absent: Council Member Hitchcock, and Mayor Pro Tempore Katzakian

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 9:31 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JUNE 23, 2009**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, June 23, 2009, commencing at 7:04 a.m.

Present: Council Member Hitchcock, Council Member Johnson, and Council Member Mounce

Absent: Mayor Pro Tempore Katzakian, and Mayor Hansen

Also Present: Deputy City Manager Ayers, Deputy City Attorney Magdich, and City Clerk Johl

B. Topic(s)

B-1 Update on Tienda Drive Affordable Senior Housing Project (CD)

Deputy City Manager Ayers briefly introduced the subject matter of the Tienda Drive Senior Affordable Housing Project.

Interim Community Development Director Rad Bartlam and Neighborhood Services Manager Joseph Wood provided a brief presentation regarding the Tienda Drive senior affordable housing project. Specific topics of discussion included Options A-1 and A-2, B and C, background with Eden Housing, negotiations as previously authorized, issues to be resolved throughout the process, meetings with surrounding property owners, meeting with Dr. Roget regarding family perspective on development, garden and courtyard space, emergency access points, parking options, traffic issues, adequate setbacks, buffer space next to shopping center, and ongoing public outreach.

In response to Council Member Hitchcock, Mr. Bartlam stated that, with respect to a concern about the creation of a long, deep, and narrow park and the option to have a small street next to the park, the problem with a public street as opposed to a private drive is where does it go and the reduction of the size of the project as a result. Mr. Bartlam stated a public street is substantially larger than a private driveway, there is leftover area per se in the corner with a street going through, there are ongoing concerns from Sunwest owners regarding an access point from Tienda Drive, and the option to have the project back the existing homes was met with universal opposition from adjoining property owners because of the expectation that their properties will be backing a park.

In response to Council Member Johnson, Mr. Bartlam stated the existing homes were built and the park was deeded in generally the same time frame around 1987. He stated the City subsequently acquired the adjacent land for the construction of Tienda Drive.

In response to Council Member Mounce, Mr. Bartlam stated the park is anticipated to be a passive park with generalized pathways wider than usual walkways, the Police Department will be able to drive through on patrol, and there will be more intense lighting adjacent to the project with more pedestrian oriented lighting for the park.

In response to Council Member Johnson, Mr. Bartlam stated the development is of approximately 3.3 acres at \$650,000 and the remainder of the funding will go to predevelopment and development related costs because the project is an affordable project requiring some subsidy to be built.

In response to Council Member Johnson, Mr. Bartlam confirmed that the community room could be more centrally located and generally the developer tries to place the same near the manager's proposed area.

In response to Council Member Johnson, Mr. Wood stated the funding is secured through the urban county funding group, there is a need to close out the books with the County as quickly as possible, every agency is dealing with timeliness issues, there are restrictions on the amount of balance that is allowed at any given time, the City has over a million dollars on the books that needs to be drawn down, the Department of Housing and Urban Development (HUD) will reduce funds if the expenditure timeliness are not met, and the goal is to have funds expended by this time next year.

In response to Council Member Hitchcock, Mr. Bartlam stated the main two concerns with a public street in the project is the width of the street, which would require a scaling down of the project and the units, and the substantial additional cost to the project in putting in a public street.

In response to Council Member Hitchcock, Mr. Bartlam stated there was never an option that showed access all the way through to Lower Sacramento Road, although there may be some emergency vehicle access.

In response to Council Member Hitchcock, Mr. Bartlam stated the Valentine property owners will not want to see access go through to their neighborhood.

In response to Council Member Johnson, Mr. Bartlam stated when the Valentine property does come online, access would occur by continuing the public street down from Sunwest, the Brittany access would create a cul-de-sac for the Valentine property, and Option C shows the other street option running along the Target property.

Katie Lamont, representing Eden Housing, stated the company and staff prefer Option C. Ms. Lamont specifically discussed housing for ages 62 or over instead of 55 and over with additional HUD financing, highly independent residents, programs designed to address a whole range of services, the preferred proximity of the project and park for active seniors, close proximity of the manager's office and the community room, location of the rental office, project engagement with the surrounding area and neighborhoods, the success of the Manteca project, and ongoing meetings with other service providers in the area.

In response to Myrna Wetzel, Ms. Lamont stated there may be two laundry service facilities as there are two elevators to ensure easy access for residents.

In response to Council Member Hitchcock, Mr. Bartlam stated staff will continue to work in addressing the concerns regarding the park depth and safety.

A brief discussion ensued between Council Member Johnson and Council Member Hitchcock regarding the similarity of the proposed park to Century Meadows Park and the openness of the existing parks that are utilized the greatest.

In response to Council Member Mounce, Interim Parks and Recreation Director Jim Rodems stated Century Meadows Park is a passive park with limited children activities and structures.

A brief discussion ensued between Council Member Mounce, Council Member Johnson, and Council Member Hitchcock regarding the use of the proposed park, the build out of the project taking precedence over the park, the preferred location for an affordable senior project, previous consideration of multiple designs for the park concept, and the proposed project being compatible as a passive park and a passive facility.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:56 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JUNE 30, 2009**

The June 30, 2009, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled due to the lack of a quorum.

ATTEST:

Jennifer M. Robison
Assistant City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JULY 1, 2009**

The July 1, 2009, Regular Meeting of the Lodi City Council was canceled.

ATTEST:

Jennifer M. Robison
Assistant City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 7, 2009**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, July 7, 2009, commencing at 7:04 a.m.

Present: Council Member Hitchcock, Council Member Johnson, and Council Member Mounce

Absent: Mayor Pro Tempore Katzakian, and Mayor Hansen

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Report on Transit Services (PW)

City Manager King provided a brief introduction to the status of the transit services.

Transportation Manager/Senior Traffic Engineer Paula Fernandez provided a PowerPoint presentation regarding the subject matter of transit services. Specific topics of discussion included an overview, history of services, fleet, replacement criteria, passenger statistics, trends, fixed routes, Dial-A-Ride, VineLine, funding sources, financial statistics, and related projects.

In response to Council Member Hitchcock, Ms. Fernandez stated the current 30% spare ratio is somewhat high as typically the ratio is about 10 to 20 percent. Ms. Fernandez stated the buses are older compressed natural gas vehicles with high miles.

In response to Myrna Wetzel, Ms. Fernandez stated the youth pass was publicly advertised through the newspaper and summer youth programs.

In response to Council Member Johnson, Ms. Fernandez stated the 17% ridership decline may be due to a variety of reasons including the population not increasing, economic conditions, unemployment, and there was a fare increase in 2005-2006, which provided a better return on fare box recovery.

In response to Council Member Mounce, Ms. Fernandez stated VineLine is intended to complement a fixed-route system per federal guidelines and the major difference between the two is the priority system based on reservations for Americans with Disabilities Act (ADA) certified riders.

In response to Council Member Hitchcock, Ms. Fernandez stated for Dial-A-Ride there is an attempt to meet needs of riders within the hour. She stated for VineLine, which is based on a reservation system, under federal regulations the window is within the hour.

In response to Council Member Johnson, Ms. Fernandez stated MV Transportation has an extensive software program that tracks complaints and compliments received from riders and there does not appear to be a lot of complaints based on the reports. The most recent trend of complaints received, pertaining to the lack of air conditioning in hot weather, was last year. Council Member Johnson requested copies of a few reports from various months showing the complaints.

In response to Council Member Hitchcock, Ms. Fernandez stated staff is continuing to watch the

State funding situation; although, fortunately the program does not rely too heavily on State funding as other agencies do.

In response to Council Member Hitchcock, Ms. Fernandez stated the fare box recovery includes operating costs that come from other sources than the General Fund.

In response to Council Member Mounce, Ms. Fernandez stated the existing stored bus shelters are in the process of being installed.

In response to Council Member Hitchcock, Ms. Fernandez confirmed there will be some modifications to routes in light of public interest although the routes with the greatest ridership will remain the same.

In response to Council Member Mounce, Ms. Fernandez stated she is aware of concerns brought forth by Mr. Cliff Weaver and the Council will be receiving a memo through the City Manager's office addressing those concerns.

In response to Council Member Johnson, Ms. Fernandez stated there are some Proposition 1B funds available to purchase a shorter bus to test prior to purchasing others.

In response to Council Member Hitchcock, Ms. Fernandez confirmed that spare buses do impact fare box recovery some and the primary benefit of the shorter bus is that it does not have to be replaced as often. Mr. King stated the shorter bus also has less of an impact on streets and bus stops because it weighs less.

In response to Myrna Wetzel, the representative from MV Transportation stated the taxi company recently changed its hours to provide 24-hour service but the taxi cab company does not impact the bus service because it is more expensive and not ADA convenient.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:44 a.m.

ATTEST:

Randi Johl
City Clerk



CITY OF LODI

COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Rejecting All Bids and Authorizing Re-advertisement for Bids for the Annual Tree Trimming Contract (Power Line Clearing) for Electric Utility Department (\$375,000) (EUD)

MEETING DATE: July 15, 2009

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution rejecting all bids and authorizing re-advertisement for bids for the Annual Tree Trimming Contract (Power Line Clearing) for Electric Utility Department

BACKGROUND INFORMATION: The Electric Utility Department (EUD) has utilized a tree-trimming contractor for its line clearing requirements since November 1988. The current contract extension with Trees, Inc. of Houston, Texas is due to expire no later than August 31, 2009.

On June 11, 2009, the following bids were publicly opened:

Trees, Inc.	\$387,313.92 (withdrawn)
Asplundh	\$470,292.48
WCA	\$580,608.00
Davey	\$632,378.88
 FY2009-10 Budget	 \$375,000.00

Following the bid opening, Trees, Inc sent the City a letter withdrawing its bid due to an error. Bids were to be made on the basis of a three-person backyard crew and a three-person street crew (differing equipment and crew make-up). Trees Inc. inadvertently bid a two-person street crew that was consistent with the bid request in 2006. Based on the hourly/daily costs submitted as part of its bid, a corrected bid for Trees Inc. was calculated by staff as being \$437,068.80.

Given that all bids significantly exceeded the \$375,000 budget for this item, Staff is recommending reissuing the tree-trimming specification with the bid evaluation to be made on the basis of three-person backyard crew and a two-person street crew.

FISCAL IMPACT: Trimming trees reduces electric outages for customers and reduces emergency call-outs and repair work

FUNDING AVAILABLE: The projected cost of \$375,000 is included in the budget for fiscal year 2009/10 under Account No. 160654 – Tree Trimming. Funding for contract extensions shall be approved on a year-to-year basis.

APPROVED: _____
Blair King, City Manager

Jordan Ayers
Deputy City Manager/Internal Services Director

George F. Morrow
Electric Utility Director



TREES, INC.

650 North Sam Houston Parkway East
Suite 209

Houston, TX 77060

1-866-865-9617

Fax: (281) 260-0728

June 11, 2009

Barry Fisher
Construction/Maintenance Supervisor
City of Lodi Electric Utility Department
1331 South Ham Lane
Lodi, CA 95242

Dear Mr. Fisher:

Due to a mathematical error in our calculations Trees, Inc. withdraws our bid for the City of Lodi tree trimming project. We regret our mistake and look forward to the next bid.

Sincerely,

William Mills
Senior Vice President



A RESOLUTION OF THE LODI CITY COUNCIL REJECTING ALL
BIDS AND AUTHORIZING RE-ADVERTISEMENT FOR BIDS FOR
THE ANNUAL TREE TRIMMING CONTRACT (POWER LINE
CLEARING) FOR ELECTRIC UTILITY DEPARTMENT

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, four (4) sealed bids were received and publicly opened on June 11, 2009 at 11:00 a.m. for the provision of annual tree trimming services (power line clearing) for the Electric Utility Department; and

WHEREAS, said bids have been compared, checked, and tabulated and a report thereof filed with the City Manager as follows:

Trees, Inc	\$387,313.92 (withdrawn)
Asplundh	\$470,292.48
WCA	\$580,608.00
Davey	\$632,378.88

WHEREAS, the low price bidder Trees, Inc. withdrew its bid due to a bidding error; and

WHEREAS, the bids were evaluated on the basis of a three-person backyard crew and a three-person street crew; and

WHEREAS, the Fiscal Year 2009/10 Budget for electric utility tree trimming services is \$375,000 and all bids exceed this amount; and

WHEREAS, staff recommends that the City Council reject all tree trimming bids and authorize advertisement again with bids to be evaluated on a three-person backyard crew and a two-person street crew which is more consistent with Fiscal Year 2009/10 budget levels.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby reject all bids and authorizes re-advertisement for bids for the Annual Tree Trimming Contract (Power Line Clearing) for Electric Utility Department.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Authorize Lodi Police Department to accept the donation of a 2001 Ford F-150 Van from Ford Construction Company, Inc., of Lodi

MEETING DATE: July 15, 2009

PREPARED BY: David J. Main, Chief of Police

RECOMMENDED ACTION: Authorize Lodi Police Department to accept the donation of a 2001 Ford F-150 van from Ford Construction Company Inc., of Lodi.

BACKGROUND INFORMATION: Currently the Police Department has a 1991 Dodge van (05-056) that has a blown engine and a 1994 Ford F-350 truck (05-062D) that is primarily used to pull the DUI trailer. Both of these vehicles are assigned to the traffic unit. The Dodge van was used by the Parking Enforcement Officers and the Major Accident Investigation Team (MAIT) to conduct traffic accident investigations. Acquiring this vehicle will allow the Police Department to consolidate the functions of these two vehicles into one. This van is capable of serving both needs thereby allowing for the reduction of the police fleet by one vehicle. This will translate into some minor savings in maintenance and repair Costs.

FISCAL IMPACT: Minor savings from reduced maintenance and repair costs.

FUNDING AVAILABLE: N/A

David J. Main
Chief of Police

DJM:sm
Cc: City Attorney

APPROVED: _____
Blair King, City Manager



CITY OF LODI

COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Awarding Contract for Grape Bowl ADA Construction Project to ICE Builders, Inc. of Rancho Cordova (\$283,039.00) and Appropriate Funds as Recommended

MEETING DATE: July 15, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution awarding the contract for the above project to ICE Builders, Inc., of Rancho Cordova, in the amount of \$283,039.00 and appropriate funds as recommended below.

BACKGROUND INFORMATION: This project will remove barriers to access and provide some, although limited, improved functionality of the facilities. The initial steps of the Phase I improvements are the removal of facilities that lie in the way of improved handicapped accessibility and/or are obsolete.

The work consists of demolition of two restroom/concession stand buildings, miscellaneous other structures, concrete flat work, concrete footings, wood pole light standards, backfill of footings, site grading, the installation of Americans with Disabilities Act (ADA) seating and access, and other incidental and related work, all as shown on the plans and specification for the above project

Plans and specifications for this project were approved on April 15, 2009. The City received the following three bids for this project on July 9, 2009.

Bidder	Location	Bid
Engineer's Estimate		\$304,350.00
ICE Builders, Inc.	Rancho Cordova	\$283,039.00
Matt McCarty Construction	Lodi	\$289,797.00
Diede Construction	Woodbridge	\$319,697.40

The City has received \$323,000 from San Joaquin County discretionary funds to assist in the funding for this project. Staff is recommending the appropriation of this \$323,000 to cover these construction costs and other contingencies associated with this project. The next improvements at the Grape Bowl include the installation of an all-weather playing surface that will ultimately satisfy the County's funding stipulation of a 1.5 to 1 City match. Funding for the next phase consists of park impact fees, private contributions, and other City funds.

APPROVED: _____
Blair King, City Manager

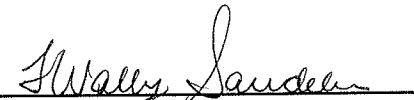
Adopt Resolution Awarding Contract for Grape Bowl ADA Construction Project to ICD Builders, Inc. of
Rancho Cordova (\$283,039.00) and Appropriate Funds as Recommended
July 15, 2009
Page 2

FISCAL IMPACT: This project is the first phase in the construction of ADA-related improvements at the Grape Bowl. The completed project will result in reduced maintenance costs and the potential for additional Parks and Recreation Department revenue from increased Grape Bowl use.

FUNDING AVAILABLE: County Discretionary Fund \$323,000.00

Jordan Ayers
Deputy City Manager/Internal Services Director

James M. Rodems
Interim Parks and Recreation Director



F. Wally Sandelin
Public Works Director

Prepared by Wesley Fujitani, Senior Civil Engineer

FWS/WKF/pmf

Attachments

cc: City Attorney
Purchasing Officer
Interim Parks and Recreation Director

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING THE CONTRACT FOR GRAPE BOWL ADA
CONSTRUCTION PROJECT AND APPROPRIATING
FUNDS AS RECOMMENDED

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on July 9, 2009 at 11:00 a.m. for the Grape Bowl ADA Construction Project, described in the specifications therefore approved by the City Council on April 15, 2009; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

Bidder	Bid
Engineer's Estimate	\$ 304,350.00
ICE Builders, Inc.	\$ 283,039.00
Matt McCarty Construction	\$ 289,797.00
Diede Construction	\$ 319,697.40

WHEREAS, staff recommends awarding the contract for the Grape Bowl ADA Construction Project to ICE Builders, Inc., of Rancho Cordova, California, in the amount of \$283,039.00.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council does hereby award the contract for the Grape Bowl ADA Construction Project to the low bidder, ICE Builders, Inc., of Rancho Cordova, California, in the amount of \$283,039.00.

BE IT FURTHER RESOLVED that funds in the amount of \$323,000.00 be appropriated from the County Discretionary fund.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Awarding Contract for Asphalt Materials for Fiscal Year 2009/10 to Granite Construction Company, of Stockton (\$28,791)

MEETING DATE: July 15, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution awarding contract for asphalt materials for Fiscal Year 2009/10 to Granite Construction Company, of Stockton, as follows:

Item A. 100 Tons 3/8" Max Medium Type A, PG 64-16	\$5,845.31
Item B. 400 Tons 1/2" Max Medium Type A, PG 64-16	\$22,946.25

BACKGROUND INFORMATION: This contract provides asphalt materials for various street maintenance projects carried on throughout the City during the fiscal year.

Specifications for this project were approved by City Council on May 20, 2009. Bid packets were mailed out to three vendors. On June 10, 2009, the City received only one bid, from Granite Construction Company, of Stockton, for the asphalt materials (bid tab attached). This bid conforms to City of Lodi Municipal Code Section 3.20.070 Bidding, and staff recommends the bid be awarded to Granite Construction Company, of Stockton, in the amount of \$28,791. This year's contract prices decreased by an average of 22.5 percent over last year's prices. This significant decrease reflects the lower cost of petroleum products. The quantities of asphalt will be ordered according to funding availability.

FISCAL IMPACT: The reduced asphalt prices will allow the City to purchase 112.5 tons more asphalt than anticipated.

FUNDING AVAILABLE: Budgeted Fund: 2009/10 Street CIP Maintenance Fund (325022)
Project Estimate: \$39,000

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

FWS/GMB/dsg
Attachment
cc: Curt Juran, Assistant Streets & Drainage Manager

APPROVED: _____
Blair King, City Manager

Bidder	F.O.B. Plant per ton	Tax	Plus Energy Surcharge / Any Additional Costs	Total per ton plus Tax and Any Additional Costs			
2,000 TONS (3/8") Max Medium Type A, PG 64-16					difference	2008/2009	% increase for FY 2009/2010
Granite Construction Company	\$53.75	\$4.70	\$0.00	\$58.45	\$18.05	\$76.50	-24%
George Reed	no bid			\$0.00			
1,000 TONS (1/2") Max Medium Type A, PG 64-10							
Granite Construction Company	\$52.75	\$4.62	\$0.00	\$57.37	\$14.82	\$72.19	-21%
George Reed	no bid						
				100 tons 3/8"	\$5,845.31		
				400 tons 1/2"	\$22,946.25		
				total of Items 1 & 2	\$28,791.56		
Bid Opening 06/10/2009 @ 11:00 AM PW Conf. Rm.							

Granite Construction
 Company
 10500 S. Harlan Road
 French Camp, CA 95231
 phone 209-982-4750 fax 209-983-0161

**BID PROPOSAL—ASPHALT MATERIALS
CITY OF LODI, CALIFORNIA
2009/2010**

ITEM 1. 9.5mm (3/8") Max Medium Type A, PG 64-16 or 64-10

Estimated Annual Quantity	F.O.B. Plant 100 Tons
PRICE PER TON:	\$ <u>53.75</u>
TAX:	\$ <u>4.68</u>
ADDITIONAL COSTS (fuel surcharge, energy adjustments, etc., if any)	\$ <u>0.00</u>
TOTAL COST PER TON	\$ <u>58.45</u>

***To bid Item 1, you must own or operate an asphalt supply plant.**

ITEM 2. 12.5m (1/2") Max Medium Type A, PG 64-10

Estimated Annual Quantity	F.O.B. Plant 400 Tons
PRICE PER TON:	\$ <u>52.75</u>
TAX:	\$ <u>4.62</u>
ADDITIONAL COSTS (fuel surcharge, energy adjustments, etc. if any)	\$ <u>0.00</u>
TOTAL COST PER TON	\$ <u>57.37</u>

***To bid Item 2, you must own or operate an asphalt supply plant.**

Loads may be six (6), twelve (12) or twenty-five (25) tons.

Plant Location: 10500 S. HARLAN RD.
(Street address)
FRENCH CAMP 95231
(City, Zip Code)
209-982-1484
(Telephone Number)
209-983-1257
(FAX number)

The following information is requested for those bidding:

Fee for Asphalt Recycling, \$ NC per ton. If No Charge write NC.

DECLARATION OF BIDDER

The undersigned declares that the specifications in the attached Notice Inviting Bids and this Bid Proposal have been examined and submits the above schedule of prices as undersigned's bid. All representations made herein are true and are made under penalty of perjury.

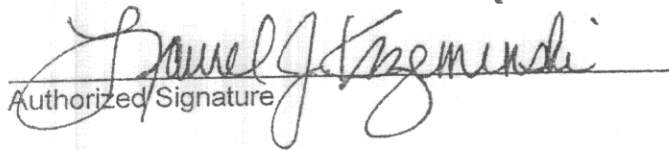
BIDDER'S COMMENTS:

GRANITE CONSTRUCTION COMPANY

Date: June 10, 2009

Contractor

BY:


Authorized Signature

Laurel J. Krzeminski, Vice President

Title

A California Corporation

TYPE OF ORGANIZATION

Individual, Partnership, or Corporation

585 W. Beach Street

Address

Watsonville, CA 95076

() 831-724-1011

Telephone

CITY OF LODI,

A Municipal Corporation

Blair King

City Manager

Attest:

Randi Johl

City Clerk

Approved as to Form:

D. Stephen Schwabauer

City Attorney



RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AWARDING THE CONTRACT FOR ASPHALT
MATERIALS FOR FISCAL YEAR 2009/10

=====

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on June 10, 2009, for the Asphalt Materials for Fiscal Year 2009/10, described in the specifications therefore approved by the City Council on May 20, 2009; and

WHEREAS, said bids have been checked and tabulated and a report thereof filed with the City Manager as follows:

Bidder	Bid
Granite Construction Company	Item A: \$5,845.31
	Item B: \$22,946.25

WHEREAS, staff recommends awarding the contract for the Asphalt Materials for Fiscal Year 2009/10 to the sole bidder, Granite Construction Company, of Stockton, California, in the amount of \$28,791.56.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council does hereby award the contract for the Asphalt Materials for Fiscal Year 2009/10 to the sole bidder, Granite Construction Company, of Stockton, California, in the amount of \$28,791.56.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the Lodi City Council in a regular meeting held July 15, 2009, by the following votes:

AYES: COUNCIL MEMBERS –
NOES: COUNCIL MEMBERS –
ABSENT: COUNCIL MEMBERS –
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Accept Improvements Under Contract for School Street and Spruce Street Wastewater Pipe Improvement Project

MEETING DATE: July 15, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Accept the improvements under the School Street and Spruce Street Wastewater Pipe Improvement Project contract.

BACKGROUND INFORMATION: The contract for this project was executed with L. R. Gomez Construction, of Dixon, on September 17, 2008, in the amount of \$63,130.

This project consisted of trenching and installing approximately 535 linear feet of 8-inch wastewater pipe, abandoning the existing wastewater pipe, and other incidental and related work, all as shown on the plans and specifications for the above project.

The final contract price was \$77,119.81. The difference between the contract amount and the final contract price was due to Contract Change Order No. 1 which was issued to compensate the contractor for delay time caused by conflicts with existing utilities and for additional labor, equipment and material used to perform work around existing utilities. Contract Change Order No. 1 also included work done to investigate a sewer problem in Mills Avenue and an increase in the quantity of curb, gutter and sidewalk.

Following acceptance by the City Council, as required by law, the City Engineer will file a Notice of Completion with the County Recorder's office. The notice serves to notify vendors and subcontractors that the project is complete and begins their 30-day period to file a stop notice requiring the City to withhold payments from the prime contractor in the event of a payment dispute.

FISCAL IMPACT: This project will decrease the amount of maintenance required for this section of the wastewater pipe.

FUNDING AVAILABLE: Wastewater Capital (171010) funds were used to cover the costs for this project.

F. Wally Sandelin
Public Works Director

Prepared by Wes Fujitani, Senior Civil Engineer

FWS/WKF/pmf

cc: Purchasing Officer
City Attorney
Water Services Manager

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Accept Improvements Under Contract for Site Improvements at Lodi Lake Park, 1101 West Turner Road

MEETING DATE: July 15, 2009

PREPARED BY: Interim Parks and Recreation Director

RECOMMENDED ACTION: Accept the improvements under contract the site improvements at Lodi Lake Park, 1101 West Turner Road contract.

BACKGROUND INFORMATION: The contract for this project was executed with AM Stephens Construction of Lodi, California on August 6, 2008, in the amount of \$338,250.35.

The new site improvements around the Lodi Lake Discovery Center were installed in conjunction with the new donated boat house from Meehleis Modular Building and the Lodi Centennial Group.

The work consisted of removing and disposing of the existing metal boat house structure, wood decking, rock retaining wall, galvanized pipe hand railing, decorative rock steps, concrete patio slabs, concrete walkways, fencing, gates, and grinding and stockpiling of asphalt concrete. New work included the installation of new Keystone block retaining walls, concrete flat work, a concrete switchback ramp system with hand railing, concrete curbing, concrete pavers, wrought iron fencing, custom steel guard railing, and modifications to existing water, sewer and electrical services.

The final contract price was \$429,727.67. The difference between the contract amount and the final contract price was mainly due to three contract change orders. Contract Change Order #1 was presented to the City Council at its November 19, 2008 meeting and was in the amount of \$49,680.25. Contract Change Order #2 was presented to the City Council at its February 4, 2009 meeting and was in the amount of \$34,484.50. Contract Change Order #3 was issued to compensate the contractor for adjusting additional manhole and water valve frames and covers to grade, re-anchoring the guard railing, and replacing 50 lineal feet of an old wastewater main. The total cost for Contract Change Order #3 is \$11,500.12.

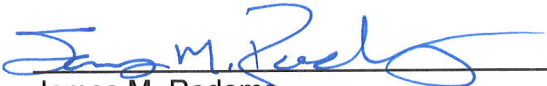
Following acceptance by the City Council, as required by law, the City Engineer will file a Notice of Completion with the County Recorder's office. The notice serves to notify vendors and subcontractors that the project is complete and begins their 30-day period to file a stop notice requiring the City to withhold payments from the prime contractor in the event of a payment dispute.

FISCAL IMPACT: There should be a slight decrease in the long-term maintenance costs in this area of Lodi Lake as a result of these improvements.

APPROVED: _____
Blair King, City

07/01/2009

FUNDING:	2002 Resources Bond Act	\$186,000.00
	Prop 40 Per Capita Fund	
	2002 Resources Bond Act	\$160,847.00
	Prop 40 Roberti-Z'Berg Harris Block Grant	
	2000 Parks Bond Act	\$168,584.00
	Prop 12 Roberti-Z'Berg Harris Block Grant	


James M. Rodems
Interim Parks and Recreation Director

cc: City Attorney
Parks Project Coordinator
Parks Superintendent
Purchasing Officer



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Grant Funding for Fiscal Year 2009/10 as Submitted by the Lodi Arts Commission

MEETING DATE: July 15, 2009

PREPARED BY: Deanie Bridewell, Events/Arts Coordinator

RECOMMENDED ACTION: Approve Grant Funding for Fiscal Year 2009-10 as submitted by the Lodi Arts Commission.

BACKGROUND INFORMATION: Lodi's Division of Arts & Culture's grants were approved at the Lodi Arts Commission meeting on Wednesday, March 13, 2009. The application deadline for nonprofit organizations to turn in their grant requests was January 30, 2009. After the grants were turned in and screened, a five-member panel from the LAC reviewed and scored the grants. Members of the LAC were sent grant summaries to review and voted on them at their meeting on March 13, 2009.

Thirteen nonprofit groups applied for grant funding. Twelve were considered for awards. One group turned in an incomplete application. While attempts were made to assist them in getting this corrected, they were unable to do so in the allotted time frame. Funding requests ranged from \$2,000 to \$48,000, and awards ranged from 850 to 8,500. It was the intent of the grant review committee to diversify funding. In order to accomplish this goal, special attention was paid to first time applicants. As example, Red Circle is a first time recipient whose program is unique and relevant to the community base.

FISCAL IMPACT: \$42,500.00 from the General Fund

FUNDING AVAILABLE: 100205.8021

Jordan Ayers, Deputy City Manager

James M. Rodems, Community Center Director

APPROVED: _____
Blair King, City Manager

Grant Awards 2009-10

Grant Tracking 2009-10

Scoring

[illegible]

**LODI ARTS COMMISSION PROJECT GRANTS
2009-10 PROGRAM CYCLE
SUMMARY OF GRANT APPLICATIONS**

Group Name: Changing Faces Theatre Co. (CFTC)

Art Form: Theatre

Grant Request: \$25,000.00

Project Budget: \$82,490.00

Previous Funding: 2006-07 - \$9,671.00; 2007-08 - \$12,000.00; 2008-09 - \$16,952.00

Recommended for Funding for 2009 - 10: YES Award: \$4,250.00

Project Description: “Alice in Wonderland will be the summer 2009 production. Following the enthusiastic reception for last summer’s production of Peter Pan and Wendy, we sought out another classic work of children’s literature that had been adapted for the stage. Of several versions available, we chose one by Anne Coulter Martens: we felt this adaptation captured the spirit of the Lewis Carroll novel well, offering a wonderful opportunity for performers and audiences to immerse themselves in a vivid imaginary world. Creating costumes, sets, lighting and dances for this make-believe realm will provide the technical and creative designers with the challenge – and fun – of envisioning a world unlike their own. The play has a large cast and allows for adding small roles or even double-casting, which is important to our Company: we want to offer roles to as many students as possible.”

Benefit to the Community: “While putting on a play is (and should be) fun, a finely crafted play is achieved only with hard work and commitment to a shared goal: in that spirit, CFTC’s program is designed to be both challenging and enjoyable. The Company provides the opportunity for its members to learn different facets of high-quality theatrical production – performance, technical, and business – and requires that participants adhere to commensurately high standards of teamwork and personal responsibility. The skills required to create a fine theater productions are skills on which our students will rely to achieve whatever personal and professional goals they pursue in their lives.

Group Name: Lodi Community Band (LCB)

Art Form(s): Musical & Educational Enrichment Performance

Grant Request: \$11,000.00

Project Budget: \$ 11,000.00

Previous Funding: 1993-94 - \$2,250.00; 1994-95 - \$2,600.00; 1995-96 - \$2,600.00; 1996-97 - \$2,560.00; 1997-98 – \$2,200.00; 1998-99 - \$2,500.00; 1999-00 - \$2,805.00; 2000-01 - \$2,835.00; 2001-02 - \$3,100.00; 2002-03 - \$3,000.00; 2003-04 - \$3,500.00; 2004-05 - \$3,500.00; 2005-06 - \$750.00; 2007-08 mini grant \$1,000.00; 2008-09 - \$5,000.00

Recommended for Funding for 2009-10: YES Award: \$850.00

Project Description: “The LCB has been in existence sine the late 1800’s when it was known as the Tokay Band. The band has had its “ups and downs” through the many years since then but has been very active as an entertainment form for Lodi since 1960. The year we honored to present the United States Army Band Herald Trumpets in concert with us on May 3rd. In looking forward to next year we would like to combine three proposals into one great event. This will be a Community Band Festival involving community Bands from surrounding towns such as

Stockton, Pleasanton, Livermore, Brentwood, and several foothill communities. These types of events are held throughout the United States and particularly in the Midwest. In conjunction with the Festival we propose to commission a musical composition to honor the city of Lodi by nationally renowned composer Max Simoncic of Stockton. The composition will be appropriate to the Lodi Community Band as well as high school and college bands. It would be dedicated to the City of Lodi. We would also feature well known clinicians such as Jennifer Olson (former Lodi Community Band member and now first chair flutist with the Stockton Symphony), Mike Vax, trumpeter, Bobby Shoe, Andrew Oliver, Laris Schisel or Doc Severinsen.

Benefit to the Community: “The composition, concert and clinics would provide educational and cultural enrichment for the entire Lodi area. The concert and clinic would take place at one of the following venues: Christmas Concert in December, 2009, Spring Concert in May 2010, The Festival of Community Bands will take place during the summer of 2010

Group Name: Lodi Central Valley Youth Symphony (CVYS)

Art Form(s): Music

Grant Request: \$5,000.00

Project Budget: \$ 11,398.00

Previous Funding: 2001-02 - \$10,000.00; 2004-05 - \$5,000.00;
2004-2005 - \$1,500.00 (Mini Grant); 2005-06 - \$5,120.00; 2007-08 - \$6,336.00;
2008-09 - \$6,048.00

Recommended for funding 2009 - 10: YES Award: \$4,250.00

Project Description: “This project was created to honor the seniors of our community through music. The CVYS wind and string quartets will perform concerts at three local convalescent hospitals on Saturday, February 7, 2009. These three concerts will be performed to meet the needs of those unable to travel to another location to enjoy symphonic music and will be free to all in attendance. Our main concert will be held on Sunday, February 8, 2009 at 3 p.m. performing at HSS. This concert will be free to those under 18 and over 55 years of age.”

Benefit to the Community: “These planned concerts will give all of the senior members of our community a change to enjoy symphonic music. This grant proposal will also make this music available to those who cannot attend a concert by bringing the concert to them. Research shows that music enhances of lives. This project gives an opportunity to our young musicians to give to an important part of their community while our seniors can enjoy interacting with our young musicians.”

Group Name: Stockton Symphony Association - “Steppin Out!”

Art Form(s): Music

Grant Request: \$3,000.00

Project Budget: \$ 64,780.00

Previous Funding: 2001-02 - \$9,542.00; 2003-04 - \$4,006.00; 2004-05 - \$7,000.00;
2005-06 - \$1,000.00; 2008-09 - \$2,500.00

Recommended for funding 2009-10: YES Award: \$2,550.00

Project Description: “Steppin’ Out! Is an exciting program by the Stockton Symphony, which brings classical music into 4th and 5th grade classrooms, and teaches children to appreciate it on a whole new level. This program educates students about various selections of symphonic music

through curriculum guides provided by the Symphony performance in the concert hall during which these pieces will be performed. Steppin' Out! is more than just music appreciation. Through this successful program, children also learn concert etiquette, math and science, history, language arts, and social skills. ”

Benefit to the Community: “In San Joaquin County, there is a projected \$100 million dollars in school budget cuts which will directly impact schools in the communities of Stockton, Lodi, Manteca and Tracy. In the Stockton Unified School District alone, nine schools lost their school music programs for the 2008-2009 academic year, due to lack of funding. The primary objective of the Stockton Symphony Education & Community Engagement programs is to create relevant programming that not only brings the Symphony to the classroom but also brings the classroom to the Symphony hall. We aim to demonstrate a lasting impact, helping children in the community to learn skills that will enable them to thrive both academically and socially. No education is complete without exposure to the arts. Arts provide more than knowledge of the art itself; through exposure to the arts, children learn social skills, math and science, and history. The arts are a designated “core academic subject” of the No Child Left Behind (NCLB) Act, however the 2005 report from the Center on Education Policy concluded that since the enactment of NCLB, instruction time for art and music has been reduced by an average of 22% nationwide, and an average of 40% in California alone. Music also teaches appropriate social interaction by creating a sense of community through group music making. An article published in Arts in Psychotherapy in 2002 states that the use of music in schools “brought students together and excited them into actively contributing to the creation of the school community.” This is the effect music has on a community, and giving children these experiences allows us to not only create a better community in the present, but also for the future.

Group Name: Tiger Pause

Art Form(s): Literature

Grant Request: \$2,000.00

Project Budget: \$ 2,450.00

Previous Funding: 2008-09 - \$500.00

Recommended for funding 2009 - 10: YES Award: \$850.00

Project Description: “For the 2009-2010 school year, the editor-in-chief of Tiger Pause is senior editor Allegra Cesena, and with assistance from the school’s journalism advisor Roger Woo. The magazine accepts entries from any Tokay High School student. The goal for the 2009 edition of Tiger Pause is a commercial quality magazine to rival any publication in the region. Funds are desired to off-set printing costs in order to increase the “rack” appeal of the publication and provide validation of the high quality of the student artwork contained therein. Tiger Pause will be printed and sold to the student body and the general public.

Benefit to the Community: “Many teenagers complain and whine when presented with an assignment that has to do with writing and any type of self-expression that has to do with anything connected with school work. By making Tiger Pause available, students who enjoy writing, artwork and other type of artistic expression will feel encouraged to keep enjoying such activities. Tiger Pause is the first opportunity for many students to be published. Seeing ones name, artwork, poetry, short story, or photograph in print can serve as a powerful motivator to continue to pursue their artistic expression. Without Tiger Pause many youth would lack an outlet to be seen or heard. Because Tiger Pause is youth run, it allows youth to support the arts.

It is a voice for teens, from a teen point of view. It allows youth to take ownership of their artistic expression.”

Group Name: Troupe Cabana Studio (Valley Performing Arts)

Art Form(s): Musical Theatre

Grant Request: \$48,000.00

Project Budget: \$95,000.00

Previous Funding: 2001-02 - \$8,000.00; 2003-04 - \$11,240.00 (Lights of Broadway); 2003-04 - \$1,700.00 (Student Scholarship); 2005-06 - \$4,880.00; 2008-09 - \$16,000.00

Recommended for funding 2008 - 09: YES Award: \$7,650.00

Project Description: “Directed by Nicole Warren and produced by Colleen Lindsay, “Les Miserables” and “West Side Story” are musical projects which will involve many in the Lodi community. Both are ideal musicals for the Charlene Powers Lange Theatre at Hutchins Street Square. They will involve a cast and choir of 100 performers auditioned locally and will include youth and adults. A live 30 piece orchestra will also be used for both musicals, selected from local public schools. Auditions for “Les Miserables” will be held at the Troupe Cabana Studio in January 2009, with rehearsals beginning in March 2009. The production will run for 2 weekends, opening on September 25, 2009 and closing on October 3, 2009. “West Side Story” will be auditioned in November 2009. Rehearsal will begin in January 2010. The show will be staged in May 2010. With the possibility of such a large cast, choir and orchestra, both musicals will cover most age groups and levels of vocal, dance and musical ability. These musicals are enormously popular, appealing to a wide range of audiences and cultures. The messages of both “Les Miserables” and “West Side Story” are of the conflicts that affect all people, due to prejudice and hate, and the hope life will be better with acceptance and love.

Benefit to the Community: “When we began Troupe Cabana Productions 18 years ago, our goal was to give children and youth a positive experiences of excellence in the performance arts. As artists and performers ourselves, it has been disappointing to see the deterioration of theater, music and dance curriculum in the schools and communities. The availability of an enriching and challenging musical opportunity for families is rare today. Although Troupe Cabana Productions has been reorganized to the Troupe Cabana Dance Studio, our objective remains the same. We will continue to look for ways to offer high quality performing arts experiences to the members of our community, both in the classroom and on the stage.

Group Name: Red Circle

Art Form: Native American Culture

Grant Request: \$10,000.00

Project Budget: \$8,560.00

Previous Funding: First time applicant and recipient

Recommended for Funding for 2009 - 10: YES Award: \$8,500.00

Project Description: “Our current project is to have a successful powwow at one of the local parks in Lodi, working diligently to confirm the date and location. This project is designed to bring back the Native culture back to Lodi and will be a stepping stone to a larger local powwow that will also increase city revenue.

Revenue will be raised by park admission, local restaurants, stores and hotels. We are respectfully are requesting funds to start up a food booth to allow us to start fundraising.”

Benefit to the Community: “Our target audience is Native American children and their cultural education and participation. Our events are open to the public to attend to both enjoy and become involved with their children and another culture.

Group Name: The Arts at St. John’s

Art Form(s): Music

Grant Request: \$5,000.00

Project Budget: \$9,550.00

Previous Funding: 2007-08 - \$1,500.00; 2008-09 - \$2,000.00

Recommended for funding 2009-10: YES Award: \$2,125.00

Project Description: “One of our concerts this season is our Calder Quartet. The Calder Quartet’s smart, accessible, and innovative programming, combined with their strong marketability and appealing persona, makes them stand apart from that of other young string quartets. The Calder Quartet’s goal is with each engagement to include as many facets of the community as possible, with a focus on developing a younger, uninitiated chamber music audience. The group has achieved tremendous success in this endeavor by pairing standard repertoire with new and progressive works, making off-site and after-hours appearances, and engaging in community and educational outreach-all creating a more than memorable concert experience.

Benefit to Community: “Bringing local and out of town audiences to the area to experience top entertainment for all ages. Our out-of-town guests are always too thrilled to discover Lodi and the downtown area.”

Group Name: Lodi Community Art Center

Grant Request: 3 Grants Requested see below

Previous Funding: 1993-94 - \$2,000.00 plus site; 1994-95 - \$1,500.00 plus site; 1995-96 - \$1,500.00 plus site; 1996-97 - \$1,500.00 L.D.B.A. grant channeled through Arts Commission; 1996-97 - \$3,000.00 plus site through May 96’; 1997-98 - \$1,000.00; 1998-99 - \$1,500.00;

Art Form(s): Visual Fine Arts

Project 1 Title: Mommy and Me

Grant Request: \$4,000.00

Project Budget: \$6,830.00

Previous Funding: First time applicant and recipient under the LCAC umbrella.

Recommended for Funding for 2009 - 10: YES Award: \$2,125.00

Project Description: “Mommy and Me Art meets every Saturday morning from 10 – 11 am. We meet in the Lodi Art Center classroom. Curriculum is based for children ages 2-7 yrs. The class is not limited to Moms....Dad, Aunties, Grandmas, everyone is welcome. Each week we have a new theme. For example, one week we may learn about elephants. So at the beginning of that class we will read a book about elephants, and then do 2 projects.

We will paint a picture of an elephant for our art, and make paper elephant ears for our craft. My class has a very relax, fun atmosphere, so the children and parents are comfortable. Currently I have an average of 5-6 students per week.”

Benefit to the Community: “The project will benefit the children and their parents because it gives families special time together. My class is a fun interactive way for members of our community to spend time interacting with other members of the community. Also the class gives children an appreciation and a better understanding of art.

Project 2 Title: Lodi Community Art Center – Youth Gallery

Art Form: Art

Grant Request: \$3,910.00

Project Budget: \$4,410.00

Previous Funding: 2005-06 - \$2,080.00; 2006-07 - \$2,273.00; 2007-08 - \$4,650.00

Recommended for Funding for 2009 - 10: YES Award: \$3,400.00

Project Description: “Youth Gallery – The objective of this project is to provide a venue for local high school students to publicly display their artwork. The Youth Gallery project is designed to showcase the talent of young artists in our community. It provides teens with the support and encouragement that is essential for them to develop confidence and pride in themselves ALL LUSD high school students are invited to participate. Students are rewarded for their work with ribbons and cash awards. More importantly, the students work is shown in a public building for the community, family and friends to see. Artwork is currently on display at the Lodi Community Art Center and Gallery. This monthly exhibit builds self-esteem and rewards the hard work of students and teachers”.

Benefit to the Community: “The Youth Gallery benefits the community in many ways. Participating students will be recognized and rewarded for their work. Having their work in a public gallery gives them a sense of community. The young artists are encouraged by the community’s interest in their creative work. It is also exciting for viewers to see the talent and hard work of local teens.

Project 3 Title: Lodi Community Art Center – Open Studio Tour

Art Form: Art

Grant Request: \$5,000.00

Project Budget: \$6,060.00

Previous Funding: First time applicant and recipient under the LCAC umbrella.

Art Form(s): Visual Fine Arts

Recommended for Funding for 2009 - 10: YES Award: \$4,250.00

Project Description: “The Artist’s Open Studio Tour 2009, offers an opportunity for visitors within Lodi and outside of the Lodi area to visit the many talented artists of the LCAC, as they work inside their studios. The artists will be available to answer questions and display their finished works. The tour will be held Saturday and Sunday, October 17 and 18. This annual event is a way to promote Lodi and its unique artistic flavor. This is the third time in as many years the LCAC has offered an Open Studios Tour. In 2007, the LCAC artists participated in conjunction with the artists from Stockton under the direction of the Stockton Arts Commission, for a tour that happened on two consecutive weekends. Last year, 2008, Stockton artists opted

not to participate. Stockton artists will be allowed to participate in the 2009 Open Studios Tour provided they are members of the Lodi Community Art Center. In addition, this year the Tour Committee is planning a raffle to generate additional income. We will seek donations from local merchants and participating artists will be encouraged to add one of their creations to the prize list”.

Benefit to the Community: “Area artists, who have the opportunity to participate and open their studios for the tour, will benefit from the exposure of their art and, most importantly, their talents. It is exciting for the visitor to enter the studio of an artist, to see their work stations and finished works. This opportunity creates a different vision of the community many have never seen before. Most visitors truly appreciate the talents and techniques they see”.

Group Name: Lodi Sandhill Crane Association

Art Form: Art

Grant Request: \$2,000.00

Project Budget: \$2,805.00

Previous Funding: 2001-02 - \$2,000.00; 2004-05 - \$3,000.00; 2005-06 - \$2,320.00; 2006-07 - \$1,505.00 (Mini-Grant); 2007-08 - \$1,000.00 (Mini-Grant); 2009-10 - \$1,700.00

Recommended for Funding for 2009 - 10: YES Award: \$1,700.00

Project Description: “The Lodi Sandhill Crane Association is requesting a Lodi Arts Commission grant to provide support for the 2009 Sandhill Crane Festival Art Show. We are planning to continue to have a fine arts and photography exhibit with approximately 50-60 pieces of artwork in a variety of media including, but not limited to paintings, pen and ink, block prints, sculpture, and photography. We recruit artists locally and regionally via wide distribution of a “Call to Artists”. Artwork will fall into either category of Sandhill cranes or other California wildlife and its habitat. Through a variety of available arts at the festival, attendees can develop a better understanding of Sandhill cranes. Not only do they appreciate the crane’s beauty, they also learn of their behaviors and importance of Central Valley wetland habitats to their continued survival. Artists can share their appreciation and understanding of nature with others in a way that resonates with the viewer. The art exhibit complements and reinforces other components of the festival and helps us achieve the Sandhill Crane Association’s mission. The art show is the most obvious display of art at the festival, but there are several other threads of art that are woven into the festival; attendees may also experience Native flute performances, Taiko drumming, live theater, origami crane folding, painting demonstrations, plein air painting, or browse (and/or purchase) the displays of well known photographers and artists at no cost. Also, attendees may opt to sign up to learn wood carving from master carvers of the Pacific Flyway Decoy Association for a nominal fee”.

Benefit to the Community: “It’s not easy to separate the art show from the rest of the Crane festival in regards to the benefit of the community. The art show provides members of the community an opportunity to view artwork from many well known and talented artists. Our show committee members are usually present in the show or nearby and are always reachable by phone to answer questions from attendees. This is another opportunity for the community member to ask questions about cranes, wildlife, or art.



CITY OF LODI

COUNCIL COMMUNICATION

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AGENDA TITLE: Approve the Proposed Expenditure Program for Lodi's Share of the 2009 Edward Byrne Memorial Justice Assistance Grant (JAG)

MEETING DATE: July 15, 2009

PREPARED BY: David Main, Chief of Police

RECOMMENDED ACTION: Approve the proposed expenditure program for Lodi's share of the 2009 Edward Byrne Memorial Assistance Grant (JAG).

BACKGROUND INFORMATION: The Edward Byrne Memorial Justice Assistance Grant Program provides funding for states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system. JAG replaces the Byrne Formula and Local Law Enforcement Block Grant (LLEBG) programs with a single funding mechanism that simplifies the administration process for grantees.

The procedure for allocating JAG funds is a formula based on population and crime statistics, in combination with a minimum allocation to ensure that each state and territory receives an appropriate share. Lodi received funding in 2006 and 2007, but was not eligible in 2008. In 2009, Lodi is eligible to receive \$30,000 in JAG grant funding.

The mechanics of the grant requires the Board of Supervisors approve the expenditure for all the cities in the County as well as the County, and then all cities need to approve the expenditure for the cities and the County. We met the grant application submittal deadline of July 9, 2009 and need approval of proposed expenditures to complete the application process.

It is proposed that the funding be used to support technology and equipment:

OSSI Hardware, Software, Licensing and equipment upgrades	\$25,000
Computer Equipment Replacement and Program upgrades	4,400
Administrative Fee of 2% to City of Stockton (required)	600
	<u>\$30,000</u>

FISCAL IMPACT: This is one-time revenue. The proposed expenditure will relieve the General Fund.

FUNDING AVAILABLE: Our success in obtaining grant funds should be known by September 1, 2009.

David Main, Chief of Police

APPROVED: _____
Blair King, City Manager



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Amending the City of Lodi Drug and Alcohol Testing Policy and Drug and Alcohol Testing Procedure in Accordance with the Federal Transit Administration Drug and Alcohol Program Requirements

MEETING DATE: July 15, 2009

PREPARED BY: Human Resources Manager and Risk Manager

RECOMMENDED ACTION: Adopt resolution amending the City of Lodi's Drug and Alcohol Testing Policy and Drug and Alcohol Testing Procedure in accordance with the Federal Transit Administration Drug and Alcohol program requirements.

BACKGROUND INFORMATION: Last year, the Lodi City Council approved an update to the City's drug and alcohol policies and procedures as directed by the Federal Transit Administration. Since those amendments were adopted in May of 2008, the FTA has directed the City to include additional language in order to comply with new regulations implemented November 2008.

Changes to the Drug and Alcohol Testing Procedure pertain to specimen collection and testing and are tracked in the submitted draft document (Exhibit A). The Council may also note that the Policy and Procedure have been combined and reformatted, as all administrative policies are being updated by the Human Resources Division. The Drug and Alcohol Testing Policy and Procedure has been revised and submitted to the various bargaining groups. Once adopted, the policies will be distributed to staff and the adopted Resolution provided to the FTA, as required.

FISCAL IMPACT: None. However, failure to amend and submit the policies as set by FTA could impact the availability of federal transit funding received by the City to cover the costs of transit service.

FUNDING AVAILABLE: Not applicable.

Janet Hamilton
Risk Manager

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AMENDING THE CITY OF LODI DRUG AND ALCOHOL
TESTING POLICY AND DRUG AND ALCOHOL TESTING
PROCEDURE IN ACCORDANCE WITH THE FEDERAL
TRANSIT ADMINISTRATION DRUG AND ALCOHOL
PROGRAM REQUIREMENTS

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WHEREAS, the City of Lodi previously adopted a Drug Free Workplace Policy and Procedure on May 1, 1995, and amended it on July 18, 2007, and again on May 7, 2008; and

WHEREAS, due to Federal Transportation Administration requirements applying to employees who operate or maintain Department of Transportation funded equipment and machinery, an amendment to that policy is required.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby amend the City of Lodi Drug Free Workplace Policy and the Drug Free Workplace Procedure to meet Department of Transportation requirements, as shown on Exhibit A attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED that the effective date of this policy shall be July 15, 2009.

Dated: July 15, 2009

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I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: DRUG AND ALCOHOL TESTING

DATE ISSUED: July 2009

REFERENCE: US DOT (FTA) 49 CFR Part 40; 49 CFR Part 655; 49 CFR Part 382; 49 CFR Part 29. Omnibus Transportation Employee Testing Act of 1991

SECTION 1: PURPOSE

The City of Lodi is committed to providing safe and efficient public services in fulfilling our responsibilities to the citizens of our community. To achieve this purpose, it is the policy of the City to:

Provide a workplace free from the adverse effects of drug and alcohol abuse or misuse;

Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner;

Encourage employees to seek professional assistance for drug and alcohol abuse or dependency;

Comply with all Federal and State regulations requiring a drug-free workplace.

Coverage under this policy does not exempt covered employees from compliance with the *City's Drug-Free Workplace Policy and Procedure*. The obligations and requirements set forth below are in addition to existing obligations and requirements set forth in the *Drug-Free Workplace Policy and Procedure*.

SECTION 2: EMPLOYEE ASSISTANCE PROGRAM

The City has established a voluntary Employee Assistance Program (EAP) to aid those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, the EAP provider, or the Human Resources Division for additional information.

Employees who think they may have an alcohol or drug usage problem are encouraged to voluntarily seek confidential assistance from the EAP or other available resources. Employees who

voluntarily come forward and seek assistance will not be disciplined solely for having or admitting a drug or alcohol problem. The City will take into consideration employees' performance problems caused by such dependency. The voluntary seeking of treatment shall not provide immunity from disciplinary action which were proposed or in process. However, action on related problems may be postponed pending successful resolution of the usage problem. Successful completion of a drug or alcohol treatment program shall be considered when determining disciplinary actions. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not voluntarily seek help or continue substance abuse even while enrolled in counseling or rehabilitation programs.

SECTION 3: CITY ADMINISTRATOR

The Human Resources Division is designated to administer this policy and procedure and to answer questions concerning its implementation. The Human Resources Division may be contacted as follows:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Phone: (209) 333-6704

SECTION 4: COVERED EMPLOYEES

Employees in classifications listed in Appendix A are "covered employees" because they perform "safety sensitive functions" as described in Section 6 below, and thus are subject to all of the provisions of this policy.

An employee may be given a written exemption from this Policy by Human Resources, if the employee's job duties do not include performing a "safety sensitive function."

SECTION 5: DEFINITIONS

Accident: Means an occurrence associated with the operation of a vehicle, if as a result:

- 1) An individual dies;
- 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

- 3) One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, “disabling damage” means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes the inoperative; or
- 4) When a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Alcohol Use: The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Chain of Custody: Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

Confirmation (or confirmatory) Test: For alcohol testing means a second test, following a screening test with a result of 0.01 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry

(GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance (drug): Any illegal drug or any substance identified in schedules I through V of the Controlled Substances Act as they may be amended. This includes, but is not limited to: marijuana (THC metabolite), amphetamines, opiates (including Heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Substances for testing will only be added to the panel for testing only with agreement of the affected collective bargaining units or as required by the appropriate regulatory agency.

Evidential Breath Testing Device (EBT): A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by the City's Drug-Free Workplace and Drug and Alcohol Testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

Performing a Safety-Sensitive Function: An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

Screening Test (also known as initial test): In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. Testing is only permitted just before, during, and just after the performance of safety-sensitive duties. In controlled substance testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis.

Substance Abuse Professional(SAP): Defines the Substance Abuse Professional (SAP) as a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes

recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a SAP, you need to have certain credentials, possess specific knowledge, receive training, and achieve a passing score on an examination. There is also a continuing education requirement

SECTION 6: SAFETY-SENSITIVE FUNCTIONS

A safety sensitive function is driving one of the following vehicles:

- A. a vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- B. a vehicle with a gross vehicle weight of at least 26, 001 pounds;
- C. a vehicle designed to transport 16 or more passengers, including the driver; or
- D. a vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

SECTION 7: PROHIBITIONS

The following conduct is prohibited and may result in disciplinary action, up to and including termination:

- A. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater;
- B. The use of alcohol within the four (4) hours preceding the performance of safety-sensitive functions, and the allowance of an employee to perform safety-sensitive functions with the knowledge that the employee has used alcohol within that time frame.

Employees who are in a “stand-by” status, shall not use alcohol or controlled substances while in such status. Employees who may be subject to “call-out” for emergency situations, and who may be the only qualified employee available for such duty, and who has used alcohol, may respond to such calls under the following guidelines:

(1) That the employee immediately notify the supervisor of the use of alcohol within the last four hours and the determination for the employee to respond is approved by the supervisor; (2) That the employee perform simple tasks of minimal risk to the safety sensitive functions(s); and (3) That the employee does not use alcohol after he/she has been notified to report for emergency duty.

- C. Being on duty or operating a vehicle described in Section 4 above, while possessing alcohol;
- D. Using alcohol while performing a safety sensitive function;
- E. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle; or DOT funded equipment and machinery.
- F. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;
- G. Refusing to submit to any alcohol or controlled substances test required by this policy. Such refusal (see Section 8) shall be considered an act of insubordination. The consequences for a refusal to submit to a required test are the same as if the employee had tested at 0.04 or greater or had violated any of the other prohibitions in this policy.
- H. The allowance of an employee to perform or continue to perform safety-sensitive functions after having knowledge of the employee's use of alcohol or controlled substances while on duty.
- I. An employee who has actual knowledge of an accident in which his/her performance of a safety-sensitive function has not been discounted by the City as a contributing factor to the accident is prohibited from using alcohol for eight (8) hours following the accident. The prohibition ends eight (8) hours after the accident (i.e. when a test is no longer required), once the employee has taken a post-accident test, or once the City has determined that the employee's performance could not have contributed to the accident.

SECTION 8:

REFUSAL TO SUBMIT TO AN ALCOHOL AND/OR DRUG TEST

A refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to:

- A. Failure to appear for any test (except for pre-employment) within a reasonable time, as determined by the employer;
- B. Failure to remain at testing site until the testing process is complete;
- C. Failure to provide a urine sample for any required drug test;
- D. Failure to permit the observation or monitoring of the specimen collection when required to do so;
- E. Failure to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure;
- F. Failure to take a second test when directed to do so by the employer or collector;
- G. Failure to undergo a medical examination when directed to do so by the MRO or employer;
- H. Failure to cooperate with any part of the testing process (eq, refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector);
- I. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
- J. Possess or wear a prosthetic or other device that could be used to interfere with the collection process; and
- K. Admit to the collector or MRO that you adulterated or substituted the specimen.

SECTION 9:

CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.01 OR GREATER BUT LESS THAN 0.04

An employee whose alcohol test indicates an alcohol concentration level between 0.01 and 0.04 will be removed from his or her safety sensitive position for at least twenty-four (24) hours.

SECTION 10:

CIRCUMSTANCES UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON COVERED EMPLOYEES

A. Pre-Employment Testing: All applicants for classifications which are covered by the appropriate Department of Transportation regulations (See Section 4 above), as well as all employees who transfer from classifications which are not covered to classifications which are covered, will be required to submit to pre-employment/pre-duty drug and alcohol testing. Applicants/employees will not be assigned to a safety sensitive position until after a verified negative drug test result.

If the applicant has previously worked for a DOT employer and has previously failed or refused a pre-employment drug test administered under this part within the past two years, the applicant is not eligible for the position.

If a pre-employment drug test is canceled, the City shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the City's random selection pool during that time, the City shall ensure that the employee takes a pre-employment drug test with a verified negative result.

B. Post-Accident Testing: Post-Accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor.

The decision as to whether or not to test the employee will be made by a supervisory and/or management employees. The presumption is for testing. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance *could not* have been a contributing factor. 49 CFR part 655 criteria for testing is a fatality, the need for medical attention away from the scene, and/or disabling damage to the vehicle. An employee must receive emergency medical care before being required to submit to a post accident drug and alcohol test.

Post-accident alcohol tests shall be administered within two (2) hours following an accident and no test may be administered after eight (8) hours. A post-accident drug test shall be conducted within thirty-two

(32) hours following the accident. If the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

C. Random Testing: Covered employees will be subject to random alcohol and drug testing as follows:

(1) A random alcohol test will be administered during any period in which the employee is ready to perform, immediately available to perform, is actually performing, or just after the employee has ceased performing safety-sensitive functions. Please refer to the definition of "Performing a Safety-Sensitive Function" in Section 5 of this policy.

(2) Testing rates are determined by the appropriate regulatory agency.

(3) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Each covered employee shall have an equal chance of being tested each time selections are made.

(4) On the day the employee is selected for random drug testing, his/her supervisor will ensure his/her duties are covered. The employee will receive a written notice indicating the time he/she is to report to the lab for testing.

(5) The City shall ensure that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

(6) Random tests are unannounced and immediate. There is an equal chance of selection on each draw with no discretion on the part of management.

D. Reasonable Suspicion Testing: Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath.

E. Return-To-Duty Testing: Prior to returning to duty, any employee who has tested positive shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.01 and/or a controlled substance test with a result indicating a verified negative result for controlled substance use.

F. Follow-up Testing: Any employee who has been certified by an SAP as in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances shall be subject to a minimum of six (6) unannounced follow-up alcohol and/or controlled substance tests during the first year back to the safety-sensitive position after the violation. The SAP can direct additional testing during this period or for an additional period up to a maximum of 60 months from the date the employee returns to duty. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary.

A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

SECTION 11:

CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST

A positive result from a drug or alcohol (concentration of 0.04 or greater) test shall result in the mandatory removal of the employee from the safety-sensitive position. Consequences shall include discipline, up to and including termination. An employee that produces a dilute negative specimen will be required to take another test immediately.

If a covered employee is not terminated, the employee:

A. Must be removed from performing any safety-sensitive function;

- B. Must submit to an examination by a substance abuse professional. Upon a determination by the substance abuse professional, the employee may be required to undergo treatment to cure his/her alcohol or drug abuse.
- C. May not be returned to his/her former safety-sensitive position until the employee submits to a return-to-duty controlled substance and/or alcohol test (depending on which test the employee failed) which indicates an alcohol concentration level of less than 0.01 or a negative result on a controlled substance test;
- D. Will be required to submit to unannounced follow-up testing after he/she has been returned to his/her safety-sensitive position. See Section 10.E above.

SECTION 12:

COSTS OF TESTING

Where there is testing for reasonable cause, the employee shall be placed on paid administrative leave pending the outcome of the test.

Time spent in conjunction with pre-duty, post-accident, random and reasonable suspicion testing shall be considered as paid time. The City shall also pay for the costs of these tests. The time an employee is removed from safety-sensitive functions is borne by the employee. Such employee may use accrued time including sick leave to cover the absence.

SECTION 13:

INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES AND AVAILABLE METHODS OF INTERVENTION

Available from the Personnel Department are Fact Sheets addressing the effects of alcohol and the various controlled substances which are tested for under this Policy.

SECTION 14:

EMPLOYEE REPRESENTATION

Employees shall have the right to representation only during discussions with management prior to a reasonable suspicion test. If a shop steward is not available, an available department employee may be selected to represent the interests of said employee. Such contact shall not, in any way, delay or interfere with the implementation of this policy and its procedure.

DRUG AND ALCOHOL TESTING Procedure

SECTION 15: **PURPOSE**

The purpose of this procedure is to delineate the application of the Omnibus Transportation Employee Testing Act under the regulations of the Federal Highway Administration (FHWA).

SECTION 16: **EFFECTIVE DATE**

This procedure shall be effective upon date of Council action.

SECTION 17: **ALCOHOL TESTING , CONTROLLED SUBSTANCE COLLECTION, AND LABORATORY SITES**

The identity and locations of the alcohol testing, controlled substance collection, and laboratory sites and facilities shall be retained in the Human Resources Division and shall be made immediately available upon request.

SECTION 18: **FORMS OF TESTING**

The procedures for each of the forms of testing being conducted by the City are described in Sections 5 through 8 of this Procedure. Inherent to each procedure, at the time of collection and/or testing, the employee is to have in his/her possession an appropriate form of identification. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. . Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

SECTION 19: **PRE-EMPLOYMENT TESTING**

- A. Pre-employment drug/alcohol testing shall be conducted upon the conditional offer of employment. This offer of employment is contingent upon the successful completion of all medical exams and drug/alcohol screenings.
- B. Upon completion of the hiring interview the department shall notify the Human Resources Division of its conditional offer of employment to the candidate, and of the candidate's acceptance of this offer. The hiring department shall refer the candidate to the Human Resources Division. The Human Resources Division shall notify the candidate of the types of testing to be conducted,

have the candidate complete the appropriate notification forms, and schedule the candidate for the appropriate testing at the appropriate collection and/or testing site.

- C. Upon completion of the drug/alcohol testing, the Human Resources Division shall notify the hiring department of such results.
- D. Notification of the results for controlled substance testing shall be provided to the candidate provided the candidate requests the results within 60 days of being notified of the disposition of his/her employment application.
- E. The City shall obtain, upon written consent of the employee, information on the employee's alcohol tests with a concentration result of 0.01 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two (2) years from previous employers. This information shall be obtained and reviewed by the City no later than fourteen (14) calendar days after the first time an employee performs safety-sensitive functions. The employee shall not perform any safety-sensitive functions after fourteen (14) calendar days without obtaining the information.
- F. As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with a DOT regulated agency or employer. An employer must obtain and review the information listed below from any DOT-regulated employer for which the employee performed safety-sensitive functions in the previous two years. The information obtained must include:
 - 1. Information of the employee's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
 - 2. Information of the employee's controlled substance test in which a positive result was indicated.
 - 3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
 - 4. Other violations of DOT agency drug and alcohol testing regulations.

SECTION 20:

RANDOM TESTING

All covered employees shall be subject to periodic random testing. In accordance with, and subject to modification by the DOT, employees shall be tested at the minimum annual percentage rate of ten percent (10%) of the average number of employees covered by this policy for random alcohol; and fifty percent (50%) of the average number of employees covered by this policy for random controlled substances.

- A. Random generation. Covered employees shall be scheduled for unannounced alcohol and controlled substance tests and selected for testing by utilizing a random number generator. Each employee shall have an equal chance of being tested each time selections are made.
- B. Employee notification. On the date the employee is selected for testing, the employee's supervisor shall be notified of the selection. The supervisor shall provide written notification of selection for testing to the employee. The supervisor shall arrange coverage of the employee's duties. The supervisor shall direct the employee to cease the performance of safety-sensitive functions, and to immediately proceed to the appropriate testing and/or collection site.

An employee shall only be tested for alcohol during any period in which he/she is actually performing, ready to perform, immediately available to perform, or just after the employee has ceased performing safety-sensitive functions.

SECTION 21:

REASONABLE SUSPICION TESTING

- A. Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform the job safely is reduced.
- B. As currently provided in the City's *Drug-Free Workplace Policy and Procedure*, the City may require an employee to submit to an alcohol and/or controlled substance test whenever it has reasonable suspicion to believe that an employee has violated the prohibitions of the *Drug and Alcohol Testing Policy*.
- C. Alcohol testing is authorized only if the observations leading to reasonable suspicion are made during, just preceding, or just after the period of the work day that the employee is performing the safety-sensitive functions of his/her position.

- D. Any supervisor or manager who has determined reasonable suspicion shall immediately prevent or direct the employee to stop performing the duties of his/her position, and inform the employee that he/she shall be referred to alcohol/drug testing on such basis.
- E. The supervisor or manager shall immediately contact his/her supervisor and the Human Resources Manager with notification of the action taking place, and shall transport the employee to the testing/collection site.
- F. The employee shall be immediately transported by the supervisor to the alcohol testing and/or collection site and said test shall be administered within two (2) hours following the determination of reasonable suspicion.
- G. The supervisor or manager shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
- H. Any supervisor or manager encountering an employee who refuses to submit to a drug and/or alcohol test shall remind the employee of the requirements and disciplinary consequences of this policy and procedure. The employee's refusal shall be documented in writing. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the supervisor or manager should Remove the employee from safety sensitive service and arrange for the employee to be safely transported home after the employee has undergone alcohol and controlled substance testing.
- I. Upon completion of the testing, the supervisor is to contact the Human Resources Manager and report the status of such testing.

SECTION 22:

POST-ACCIDENT TESTING

- A. The employee's supervisor or manager shall make a determination to conduct post-accident testing in accordance with the City's drug/alcohol policies immediately after notification of the accident. If a determination is not made and the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

- B. Where possible, the supervisor or manager should make every effort under the circumstances surrounding the accident to ensure that the employee, even one who has been permitted to leave or has had to leave the site, is available for a post-accident test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that an employee cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident, materials to secure the accident site, or necessary emergency medical care. An employee who is seriously injured and cannot consent to provide a specimen within the appropriate time frames of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.
- C. If a determination is made to conduct post-accident testing, the supervisor or manager shall provide documentation of the accident and as to his/her decision to the Human Resources Manager within one (1) working day of the accident.
- D. The employee shall remain readily available for such testing or may be deemed to have refused to submit to testing.
- E. The supervisor or manager shall transport the employee to the alcohol testing and/or controlled substance collection site, and if necessary, to the employee's home after completion of the testing and collection.
- F. The employee shall be placed upon administrative leave with pay pending the outcome of the test(s).

SECTION 23:

SUBSTANCE ABUSE PROFESSIONAL (SAP) SERVICES

Each employee who engages in conduct prohibited by this Policy and Procedure shall be evaluated by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use.

Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this Policy and Procedure, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.01 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance.

In addition, each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be:

- A. evaluated by a SAP to determine that the employee has properly followed any rehabilitation program prescribed under, and
- B. subject to unannounced follow-up alcohol and controlled substance tests administered by the City following the employee's return to duty.

SECTION 24:

SPECIFIED PROCEDURES

Specific procedures pertaining to the subjects listed below are attached to this Procedure as indicated:

Alcohol Testing Methodology and Procedures	Appendix B
Controlled Substances Testing Procedure	Appendix C
Controlled Substance Testing Methodology	Appendix D
Test Results	Appendix E
Confidentiality and Recordkeeping	Appendix F

APPENDIX A
COVERED EMPLOYEES

Employees in the classifications listed below are covered under the applicable regulations for those employees. Covered employees are:

- A. Those who perform “safety sensitive” functions as defined in the City of Lodi *Drug and Alcohol Testing Policy*.
- B. Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- C. Employees with a commercial driver’s license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- D. Drivers operating a revenue service vehicle, including when not in revenue service.

Employees may be included in more than one listing below in accordance to the various regulatory agencies under which their work specification is assigned. All covered employees shall be managed as one pool for testing purposes and shall be tested in accordance with the highest level of testing required.

Federal Motor Carrier Safety Administration (FMCSA). Alcohol testing administered at 10% of the total number of covered employees. Drug test administered to at least 50% of covered employees

(1) Public Works Department
Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

Street Division
Street Supervisor
Street Maintenance Worker III
Laborer Maintenance Worker I/II

Water/Wastewater Division

Water/Wastewater Supervisor
Plant and Equipment Mechanic
Water/Wastewater Maintenance Worker III
Laborer/Maintenance Worker I/II

(2) Electric Utility Department

Apprentice Lineman/Linewoman
Electric Lineman/Linewoman
Electric Foreman/Forewoman
Electric Apparatus Mechanic
Utility Equipment Specialist

A covered employee includes regular and part-time/temporary employees in the above listed classifications.

Federal Transit Administration (FTA). Alcohol testing administered at 10% of the total number of covered employees Drug test administered to at least 25% of covered employees.

(1) Public Works Department

Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

United States Coast Guard (USCG). No alcohol testing required per Coast Guard regulations. Drug test administered to at least 50% of covered employees

Small Vessel Operators

APPENDIX B
ALCOHOL TESTING METHODOLOGY AND PROCEDURES

I. ALCOHOL TESTING METHODOLOGY

- A. Breath Alcohol Technician (BAT): The City or its agent shall only utilize a BAT who meets the stringent training requirements of the DOT or is a law enforcement officer certified to use the EBT that is utilized.
- B. Alcohol Testing Devices: The City or its agent shall only utilize an EBT which meets the DOT requirements.
- C. Quality Assurance Plan (QAP): The City or its agent shall ensure that the EBT shall have a quality assurance plan developed by the manufacturer and that said plan is complied with for each EBT used for alcohol testing.
- D. Alcohol Testing Site: Alcohol testing shall be conducted in a location that affords visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

II. ALCOHOL TESTING PROCEDURES

- A. Preparation for Testing: Prior to being tested, the BAT shall require the employee to provide a photo identification and shall explain the testing procedure to the employee.
- B. Procedures for Screening Test: The following procedures shall be followed:
 - 1. The BAT and the employee shall complete their respective portions of the Breath Alcohol Testing Form from the DOT. Refusal by the employee to sign this form shall be regarded as a refusal to take the test.
 - 2. An individually-sealed mouthpiece shall be opened in view of the employee and attached to the EBT in accordance with the manufacturer's instructions.
 - 3. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
 - 4. a. If the EBT does not meet the DOT requirements, the BAT and the employee shall take the following steps:
 - (1) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing

device, serial number of the testing device, time and quantified result in Step 3 of the form.

- (2) Record the test number, date of the test, name of the BAT, location, and quantified test result in the log book. The employee shall initial the log book entry.
 - b. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - c. If the EBT prints the test results directly on the form, the BAT shall show the employee the result displayed on the EBT.
5.
 - a. In any case in which the result of the screening test is a breath alcohol concentration of less than 0.01, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In that event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 4b or 4c of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test shall be invalid and the City and employee shall be so advised.
 - d. No further testing is authorized. The BAT shall transmit the result of less than 0.01 to the City in a confidential manner, and the City shall receive and store the information so as to ensure that confidentiality is maintained.
6. If the result of the screening test is an alcohol concentration of 0.01 or greater, a confirmation test shall be performed.

7. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

C. Procedures for Confirmation Test: The following procedures shall be followed:

1. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow the procedures outlined above in Preparation for Testing.
2. The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e. to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
3.
 - a. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
 - b. In all cases, the first three steps of the "Procedures for Screening Test" shall be followed. A new mouthpiece shall be used for the confirmation test.
4. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed

using that instrument. However, testing may proceed on another instrument.

5. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.
6. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
7.
 - a. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - b. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
8.
 - a. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 7a. or 7b. of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test is invalid and the City and employee shall be so advised.
 - d. The BAT shall conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9.
 - a. The BAT shall transmit all results to the City in a confidential manner. The Human Resources Manager or designee shall receive and handle alcohol testing results in a confidential manner. All

communications by BATs to the City concerning the alcohol testing results of employees shall be to the designated City representative.

b. Such communication may be in writing, in person, or by telephone or electronic means, but the BAT shall ensure immediate communication to the City of the results that require the City to prevent the employee from performing a safety-sensitive function.

c. If the initial communication is not in writing, the City shall establish a mechanism to verify the identity of the BAT providing the information.

d. If the initial communication is not in writing, the BAT shall follow the initial communication by providing to the City the City's copy of the breath alcohol testing form. The City shall store the information so as to ensure that confidentiality is maintained.

D. Refusals to Test and Uncompleted Tests

1. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the City.
2. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

E. Inability to Provide an Adequate Amount of Breath

1. This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.
2. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the City.
3. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the City.

4. If the employee attempts and fails to provide an adequate amount of breath, the City shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.
 - a. If the MRO determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The MRO shall provide to the City a written statement of the basis for his or her conclusion.
 - b. If the MRO, in his or her reasonable medical judgment, is unable to make the determination set forth herein, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The MRO shall provide a written statement of the basis for his or her conclusion to the City.

F. Invalid Tests. A breath alcohol test shall be invalid under the following circumstances:

1. The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of 0.01 or above obtained on the device since the last valid external calibration check shall be invalid;
2. The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test;
3. The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test;
4. The BAT does not sign the required form;
5. The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;
6. An EBT fails to print a confirmation test result; or
7. On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

APPENDIX C
CONTROLLED SUBSTANCES TESTING PROCEDURE

- I. URINE SPECIMEN COLLECTION: The following procedures shall be followed:
- A. The actual collection site shall be a location having an enclosure with which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing. The site shall also have a source of water for washing hands, which, if practicable, shall be external to the enclosure where urination occurs.
 - B. The collection site shall be secure.
 - C. No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored.
 - D. Collection of urine specimens shall allow individual privacy, unless there is reason to believe that an employee may alter or substitute the specimen provided.
 - E. For purposes of this section, the following circumstances are the exclusive grounds constituting a reason to believe that the employee may alter or substitute the specimen.
 - 1. The employee has presented a urine specimen that falls outside the normal temperature range 32.5°C - 37.7°C (90.5°F - 99.8°F), and
 - a. The employee declines to provide a measurement of oral body temperature; or
 - b. Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen;
 - 2. The last urine specimen provided by the employee (i.e. on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;
 - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or
 - 4. The employee has previously been determined to have used a controlled substance without medical authorization and the particular test

was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to duty.

- F. A higher-level supervisor of the collection site person, or the Human Resources Manager, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described herein.
- G. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:
 - 1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.
 - 2. When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the City's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection.
 - 3. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the employee's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The employee may retain his or her wallet.
 - 4. The employee shall be instructed to wash and dry his/her hands prior to urination.
 - 5. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
 - 6. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for employee privacy. The collection site person shall provide the employee with a specimen bottle or collection container, if applicable, for this purpose.

7. The collection site person shall note any unusual behavior or appearance on the urine custody and control form.
8. The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection.
9. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml.
10. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.
11. If a single specimen bottle is used as a collection container, the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder (at least 15 ml) in the collection bottle (to be used as the split specimen).
12. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.
13. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested at the employee's expense in a different DHHS-certified laboratory for the presence of the drugs for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.
14. When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
15. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
16. Action required by this Policy and Procedure as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the rest of the split specimen.

17. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the City, and the employee.
18. Upon receiving the specimen from the employee, the collection site person shall determine if it has at least 30 ml of urine for the primary or single specimen bottle and, an additional 15 ml of urine for the split specimen bottle. If the employee is unable to provide such a quantity of urine, the collection site person shall instruct the employee to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the City so notified. The MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the employee's inability to provide a specimen is genuine or constitutes a refusal to test. (In pre-employment testing, if the City does not wish to hire the employee, the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the City in writing.
19. After the specimen has been provided and submitted to the collection site person, the employee shall be allowed to wash his/her hands.
20. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.
21. A specimen temperature outside the range of 32.5°C - 37.7°C (90.5°F - 99.8°F) constitutes a reason to believe that the employee has altered or substituted the specimen. In such cases, the employee supplying the specimen may volunteer to have his/her oral temperature taken to provide evidence to counter the reason to believe the employee may have altered or substituted the specimen.
22. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

23. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
24. Whenever there is reason to believe that a particular employee has altered or substituted the specimen as described in paragraph I.E.1., a or b, of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
25. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the employee to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.
26. The collection site person and the employee being tested shall be present at the same time during the procedures outline in paragraphs I.G.19.-22 of this section.
27. The collection site person shall place securely on the bottle an identification label which contains the date, the employee's specimen number, and any other identifying information provided or required by the City. If separate from the label, the tamper-proof seal shall also be applied.
28. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
29. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
30. a. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in fact the specimen he/she provided.

b. When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the City. The employee may not be required to waive liability with respect to negligence on the part of any person

participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

31. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.
 32. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.
 33.
 - a. While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his/her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him/her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.
 - b. The collection site person shall not leave the collection site in the interval between the presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the City) a new collection begun.
- H. Observed Collections: A number of situations requiring direct observations exist. These are done to guard against employee attempts to mask the testing process. Observed collections are required in the following circumstances:
1. All return to duty tests;
 2. All followup tests;
 3. Anytime the employee is directed to provide another specimen because the temperature of the original specimen was out of the accepted range of 90°F - 100° F;
 4. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
 5. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

6. Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;

7. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

- I. Chain-of-Custody: A chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

APPENDIX D
CONTROLLED SUBSTANCE TESTING METHODOLOGY

I. APPROPRIATE LABORATORY

The City of Lodi shall utilize a DHHS certified laboratory for the processing of all controlled substance tests. The identification of such laboratory may be obtained by contacting the Human Resources Manager.

II. INITIAL TEST

A. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	*300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

*25 ng/ml if immunoassay specific for free morphine.

B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cut off levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

III. CONFIRMATORY TEST

A. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

Marijuana metabolite ¹	15 ng/ml
Cocaine metabolite ²	150 ng/ml
Opiates:	
Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml

Amphetamines:

Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid.

²Benzoylecgonine.

- B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

IV. REPORTING OF TEST RESULTS

- A. The laboratory shall report test results to the MRO within an average of five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible laboratory personnel. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the City, and drug testing laboratory specimen identification number (accession number).
- B. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
- C. The MRO may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the City.
- D. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and City must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.
- E. The laboratory shall send only to the MRO the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory of the individual responsible for attesting to the

validity of the test reports, and attached to which shall be a copy of the test report.

- F. The laboratory shall provide to the Human Resources Manager a monthly statistical summary of urinalysis testing of the City's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

1. Initial Testing:
 - a. Number of specimens received;
 - b. Number of specimens reported out; and
 - c. Number of specimens screened positive for:
2. Confirmatory Testing:
 - a. Number of specimens received for confirmation;
 - b. Number of specimens confirmed positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamine

Marijuana metabolites
Cocaine metabolites
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

Monthly reports shall not include data from which it is reasonably likely that information about individuals' test can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report withheld for the reason, the laboratory will so inform the employer in writing.

- G. Unless otherwise instructed by the City in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

V. SPECIMEN RETENTION

Long-term storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of two (2) years all specimens confirmed positive, in their original labeled specimen bottles. Within this two-year period, the employer may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of two (2) years, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

APPENDIX E TEST RESULTS

I. MEDICAL REVIEW OFFICER (MRO) DUTIES AND QUALIFICATIONS

- A. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of this Policy and Procedure. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. The review shall be performed by the MRO prior to the transmission of the results to the City.
- B. The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. If the MRO finds that the documentation is unsatisfactory or if the information gives reasonable doubt about the lab analysis, the MRO may:
 - 1. Request laboratory records regarding the specimen to see if correct procedures were followed; and/or
 - 2. Require a re-analysis of a specimen for accuracy or validity of the positive result. The MRO is the only one authorized to order a re-analysis of the original sample.

The MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history and any other relevant biomedical information.

II. POSITIVE TEST RESULTS

- A. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the employee an opportunity to discuss the test result with him/her.
- B. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph II.E. of this section, the MRO shall talk directly with the employee before verifying a test as positive.

EXHIBIT A

- C. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated City official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.
- D. If, after making all reasonable efforts, the designated City official is unable to contact the employee, the City may place the employee on leave without pay.
- E. The MRO may verify a test as positive without having communicated directly with employee about the test in three circumstances:
 - 1. The employee expressly declines the opportunity to discuss the test;
 - 2. The designated City representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five (5) days have passed since the date the employee was successfully contacted by the designated City representative; or
 - 3. Other circumstances provided for in DOT agency drug testing regulations.
- F. If a test is verified positive under the circumstances specified in paragraphs II.E.1-3, of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidable prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.
- G. Following verification of a positive test result, the MRO shall refer the employee to the City's employee assistance program and notify the City's Risk Manager of the test results.

III. VERIFICATION FOR OPIATES; REVIEW FOR PRESCRIPTION MEDICATION

- A. Before the MRO verifies a confirmed positive result for opiates, he/she shall determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the City's GC/MS confirmation testing for opiates confirms the presence of 6-monocetylmorphine.)
- B. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the City, and the employee. Employees do not have access to a test of their split specimen following an invalid result.
- C. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

IV. DISCLOSURE OF INFORMATION

- A. Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as part of the testing verification process.
- B. The MRO may disclose such information to the City, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if:
 - 1. An applicable DOT regulation permits or requires such disclosure;

2. In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or
 3. In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his/her safety-sensitive function could pose a significant safety risk.
- C. Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

APPENDIX F CONFIDENTIALITY AND RECORDKEEPING

I. CONFIDENTIALITY AND ACCESS TO RECORDS

- A. Laboratory reports or test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential medical file that will be securely kept under the control of the Human Resources Manager. The reports or test results shall be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without consent, may also occur when:
 - 1. the information is compelled by law or by judicial or administrative process;
 - 2. the information has been placed at issue in a formal dispute between the City and employee;
 - 3. the information is to be used in administering an employee benefit plan; or
 - 4. the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.
- B. Except as required by law or expressly authorized or required in this section, the City shall not release driver information that is contained in records required to be maintained by this Policy and Procedure.
- C. An employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances including any records pertaining to his/her alcohol or controlled substances tests. The City shall promptly provide the records requested by the employee.
- D. The City shall make available copies of all results for City alcohol and/or controlled substances testing conducted under the Policy and Procedure and any other information pertaining to the City's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City.
- E. When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to the City's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

- F. Records shall be made available to a subsequent employer upon receiving a written request from a former employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the former employee's request.
- G. The City may disclose information required to be maintained under this Policy and Procedure pertaining to an employee, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the City's determination that the employee engaged in conduct prohibited by this Policy and Procedure (including, but not limited to, a workers' compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
- H. The City shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

II. MAINTENANCE AND RETENTION OF RECORDS

- A. General Requirement: The City shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. Such records will be maintained confidentially and separate from employee personnel files.
- B. Period of Retention: The City shall maintain the records in accordance with the following schedule:
 - 1. Five (5) years. The following records shall be maintained for a minimum of five (5) years:
 - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.01 or greater,
 - b. Records of employee verified positive controlled substances test results,
 - c. Documentation of refusals to take required alcohol and/or controlled substances tests,
 - d. Calibration documentation,
 - e. Employee evaluation and referrals shall be maintained for a minimum of five (5) years, and
 - f. A copy of each annual calendar year summary.

2. Two Years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and training shall maintained for a minimum of two (2) years.
3. One year. Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.01 shall be maintained for a minimum of one (1) year.

C. Types of Records: The following specific records shall be maintained:

1. Records related the collection process:
 - a. Collection logbooks, if used;
 - b. Documents relating to the random selection process;
 - c. Calibration documentation for evidential breath testing devices;
 - d. Documentation of breath alcohol technician training;
 - e. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
 - f. Documents generated in connection with decisions on post-accident tests;
 - g. Documents verifying existence of a medical explanation other inability of a covered employee to provide adequate breath or to provide a urine specimen for testing; and
 - h. Consolidated annual calendar year summaries.
2. Records related to an employee's results:
 - a. The City's copy of the alcohol test form, including the results of the test;
 - b. The City's copy of the controlled substances test chain of custody and control form;
 - c. Documents sent by the MRO to the City;
 - d. Documents related to the refusal of any employee to submit to an alcohol or controlled substances test required by this Policy and Procedure; and
 - e. Documents presented by an employee to dispute the result of an alcohol or controlled substances test administered under this Policy and Procedure.
3. Records related to other violations of this Policy and Procedure.

4. Records related to evaluations:
 - a. Records pertaining to a determination by a substance abuse professional concerning an employee's need for assistance; and
 - b. Records concerning an employee's compliance with recommendations of the substance abuse professional.
5. Records related to education and training:
 - a. Materials on alcohol misuse and controlled substance use awareness, including a copy of the City's Policy of alcohol misuse and controlled substance use;
 - b. Documentation of compliance with the requirement to establish this Policy and Procedure, including the employee's signed receipt of education materials;
 - c. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; and
 - d. Certification that any training conducted under this part complies with the requirements for such training.
6. Records related to drug testing:
 - a. Agreements with collection site facilities, laboratories, medical review officers, and consortia;
 - b. Names and positions of officials and their role in the City's alcohol and controlled substances testing program(s);
 - c. Monthly laboratory statistical summaries of urinalysis; and
 - d. The City's drug testing policy and procedures.

CITY OF LODI
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: DRUG AND ALCOHOL TESTING

DATE ISSUED: July 2009

REFERENCE: US DOT (FTA) 49 CFR Part 40; 49 CFR Part 655; 49 CFR Part 382; 49 CFR Part 29. Omnibus Transportation Employee Testing Act of 1991

SECTION 1: PURPOSE

The City of Lodi is committed to providing safe and efficient public services in fulfilling our responsibilities to the citizens of our community. To achieve this purpose, it is the policy of the City to:

Provide a workplace free from the adverse effects of drug and alcohol abuse or misuse;

Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner;

Encourage employees to seek professional assistance for drug and alcohol abuse or dependency;

Comply with all Federal and State regulations requiring a drug-free workplace.

Coverage under this policy does not exempt covered employees from compliance with the *City's Drug-Free Workplace Policy and Procedure*. The obligations and requirements set forth below are in addition to existing obligations and requirements set forth in the *Drug-Free Workplace Policy and Procedure*.

SECTION 2: EMPLOYEE ASSISTANCE PROGRAM

The City has established a voluntary Employee Assistance Program (EAP) to aid those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, the EAP provider, or the Human Resources Division for additional information.

Employees who think they may have an alcohol or drug usage problem are encouraged to voluntarily seek confidential assistance from the EAP or other available resources. Employees who voluntarily come forward and seek assistance will not be disciplined.

solely for having or admitting a drug or alcohol problem. The City will take into consideration employees' performance problems caused by such dependency. The voluntary seeking of treatment shall not provide immunity from disciplinary action which were proposed or in process. However, action on related problems may be postponed pending successful resolution of the usage problem. Successful completion of a drug or alcohol treatment program shall be considered when determining disciplinary actions. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not voluntarily seek help or continue substance abuse even while enrolled in counseling or rehabilitation programs.

SECTION 3: CITY ADMINISTRATOR

The Human Resources Division is designated to administer this policy and procedure and to answer questions concerning its implementation. The Human Resources Division may be contacted as follows:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Phone: (209) 333-6704

SECTION 4: COVERED EMPLOYEES

Employees in classifications listed in Appendix A are "covered employees" because they perform "safety sensitive functions" as described in Section 6 below, and thus are subject to all of the provisions of this policy.^{1[1]}

An employee may be given a written exemption from this Policy by Human Resources, if the employee's job duties do not include performing a "safety sensitive function."

SECTION 5: DEFINITIONS

Accident: Means an occurrence associated with the operation of a vehicle, if as a result:

- 1) An individual dies;
- 2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

- 3) One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, “disabling damage” means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes the inoperative; or
- 4) When a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Alcohol Use: The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

Chain of Custody: Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.

Confirmation (or confirmatory) Test: For alcohol testing means a second test, following a screening test with a result of 0.01^{2[2]} or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure

reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance (drug): Any illegal drug or any substance identified in schedules I through V of the Controlled Substances Act as they may be amended. This includes, but is not limited to: marijuana (THC metabolite), amphetamines, opiates (including Heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Substances for testing will only be added to the panel for testing only with agreement of the affected collective bargaining units or as required by the appropriate regulatory agency.

Evidential Breath Testing Device (EBT): A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by the City's Drug-Free Workplace and Drug and Alcohol Testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

Performing a Safety-Sensitive Function: An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive function.

Screening Test (also known as initial test): In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. Testing is only permitted just before, during, and just after the performance of safety-sensitive duties. In controlled substance testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis.

Substance Abuse Professional(SAP): [Defines the Substance Abuse Professional \(SAP\) as a person who evaluates employees who](#)

have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. In order to be a SAP, you need to have certain credentials, possess specific knowledge, receive training, and achieve a passing score on an examination. There is also a continuing education requirement

SECTION 6: SAFETY-SENSITIVE FUNCTIONS

A safety sensitive function is driving one of the following vehicles:

- A. a vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
- B. a vehicle with a gross vehicle weight of at least 26, 001 pounds;
- C. a vehicle designed to transport 16 or more passengers, including the driver; or
- D. a vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.

SECTION 7: PROHIBITIONS

The following conduct is prohibited and may result in disciplinary action, up to and including termination:

- A. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater;
- B. The use of alcohol within the four (4) hours preceding the performance of safety-sensitive functions, and the allowance of an employee to perform safety-sensitive functions with the knowledge that the employee has used alcohol within that time frame.

Employees who are in a “stand-by” status, shall not use alcohol or controlled substances while in such status. Employees who may be subject to “call-out” for emergency situations, and who may be the only qualified employee available for such duty, and who has used alcohol, may respond to such calls under the following guidelines:

(1) That the employee immediately notify the supervisor of the use of alcohol within the last four hours and the determination for the employee to respond is approved by the supervisor; (2) That the employee perform simple tasks of minimal risk to the safety sensitive

functions(s); and (3) That the employee does not use alcohol after he/she has been notified to report for emergency duty.

- C. Being on duty or operating a vehicle described in Section 4 above, while possessing alcohol;
- D. Using alcohol while performing a safety sensitive function;
- E. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any controlled substances, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle; or DOT funded equipment and machinery.
- F. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for controlled substances;
- G. Refusing to submit to any alcohol or controlled substances test required by this policy. Such refusal (see Section 8) shall be considered an act of insubordination. The consequences for a refusal to submit to a required test are the same as if the employee had tested at 0.04 or greater or had violated any of the other prohibitions in this policy.
- H. The allowance of an employee to perform or continue to perform safety-sensitive functions after having knowledge of the employee's use of alcohol or controlled substances while on duty.
- I. An employee who has actual knowledge of an accident in which his/her performance of a safety-sensitive function has not been discounted by the City as a contributing factor to the accident is prohibited from using alcohol for eight (8) hours following the accident. The prohibition ends eight (8) hours after the accident (i.e. when a test is no longer required), once the employee has taken a post-accident test, or once the City has determined that the employee's performance could not have contributed to the accident.

SECTION 8:

REFUSAL TO SUBMIT TO AN ALCOHOL AND/OR DRUG TEST

A refusal to submit to an alcohol or controlled substances test required by this policy includes, but is not limited to:

- A. Failure to appear for any test (except for pre-employment) within a reasonable time, as determined by the employer;
- B. Failure to remain at testing site until the testing process is complete;
- C. Failure to provide a urine sample for any required drug test;
- D. Failure to permit the observation or monitoring of the specimen collection when required to do so;
- E. Failure to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure;
- F. Failure to take a second test when directed to do so by the employer or collector;
- G. Failure to undergo a medical examination when directed to do so by the MRO or employer;
- H. Failure to cooperate with any part of the testing process (eq, refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector);
- I. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
- J. Possess or wear a prosthetic or other device that could be used to interfere with the collection process; and
- K. Admit to the collector or MRO that you adulterated or substituted the specimen.

SECTION 9:

CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.01 OR GREATER BUT LESS THAN 0.04

An employee whose alcohol test indicates an alcohol concentration level between 0.01 and 0.04 will be removed from his or her safety sensitive position for at least twenty-four (24) hours.

SECTION 10:

CIRCUMSTANCES UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON COVERED EMPLOYEES

A. Pre-Employment Testing: All applicants for classifications which are covered by the appropriate Department of Transportation regulations (See Section 4 above), as well as all employees who transfer from classifications which are not covered to classifications which are covered, will be required to submit to pre-employment/pre-duty drug and alcohol testing. Applicants/employees will not be assigned to a safety sensitive position until after a verified negative drug test result.

If the applicant has previously worked for a DOT employer and has previously failed or refused a pre-employment drug test administered under this part within the past two years, the applicant is not eligible for the position.

If a pre-employment drug test is canceled, the City shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the City's random selection pool during that time, the City shall ensure that the employee takes a pre-employment drug test with a verified negative result.

B. Post-Accident Testing: Post-Accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor.

The decision as to whether or not to test the employee will be made by a supervisory and/or management employees. The presumption is for testing. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance *could not* have been a contributing factor. 49 CFR part 655 criteria for testing is a fatality, the need for medical attention away from the scene, and/or disabling damage to the vehicle. An employee must receive emergency medical care before being required to submit to a post accident drug and alcohol test.

Post-accident alcohol tests shall be administered within two (2) hours following an accident and no test may be administered after eight (8) hours. A post-accident drug test shall be conducted within thirty-two

(32) hours following the accident. If the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

C. Random Testing: Covered employees will be subject to random alcohol and drug testing as follows:

(1) A random alcohol test will be administered during any period in which the employee is ready to perform, immediately available to perform, is actually performing, or just after the employee has ceased performing safety-sensitive functions. Please refer to the definition of "Performing a Safety-Sensitive Function" in Section 5 of this policy.

(2) Testing rates are determined by the appropriate regulatory agency.

(3) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Each covered employee shall have an equal chance of being tested each time selections are made.

(4) On the day the employee is selected for random drug testing, his/her supervisor will ensure his/her duties are covered. The employee will receive a written notice indicating the time he/she is to report to the lab for testing.

(5) The City shall ensure that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

(6) Random tests are unannounced and immediate. There is an equal chance of selection on each draw with no discretion on the part of management.

D. Reasonable Suspicion Testing: Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or controlled substances. The observation must be based on short-term indicators, such as blurry eyes, slurring, or alcohol on the breath.

E. Return-To-Duty Testing: Prior to returning to duty, any employee who has tested positive shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.01 and/or a controlled substance test with a result indicating a verified negative result for controlled substance use.

F. Follow-up Testing: Any employee who has been certified by an SAP as in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances shall be subject to a minimum of six (6) unannounced follow-up alcohol and/or controlled substance tests during the first year back to the safety-sensitive position after the violation. The SAP can direct additional testing during this period or for an additional period up to a maximum of 60 months from the date the employee returns to duty. The SAP can terminate the requirement for the follow-up testing in excess of the minimum at any time, if the SAP determines that the testing is no longer necessary.

A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on controlled substances use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

SECTION 11:

CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST

A positive result from a drug or alcohol (concentration of 0.04 or greater) test shall result in the mandatory removal of the employee from the safety-sensitive position. Consequences shall include discipline, up to and including termination. An employee that produces a dilute negative specimen will be required to take another test immediately.

If a covered employee is not terminated, the employee:

A. Must be removed from performing any safety-sensitive function;

B. Must submit to an examination by a substance abuse professional. Upon a determination by the substance abuse professional, the employee may be required to undergo treatment to cure his/her alcohol or drug abuse.

C. May not be returned to his/her former safety-sensitive position until the employee submits to a return-to-duty controlled substance and/or alcohol test (depending on which test the employee failed) which indicates an alcohol concentration level of less than 0.01 or a negative result on a controlled substance test;

D. Will be required to submit to unannounced follow-up testing after he/she has been returned to his/her safety-sensitive position. See Section 10.E above.

SECTION 12:

COSTS OF TESTING

Where there is testing for reasonable cause, the employee shall be placed on paid administrative leave pending the outcome of the test.

Time spent in conjunction with pre-duty, post-accident, random and reasonable suspicion testing shall be considered as paid time. The City shall also pay for the costs of these tests. The time an employee is removed from safety-sensitive functions is borne by the employee. Such employee may use accrued time including sick leave to cover the absence.

SECTION 13:

INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND CONTROLLED SUBSTANCES AND AVAILABLE METHODS OF INTERVENTION

Available from the Personnel Department are Fact Sheets addressing the effects of alcohol and the various controlled substances which are tested for under this Policy.

SECTION 14:

EMPLOYEE REPRESENTATION

Employees shall have the right to representation only during discussions with management prior to a reasonable suspicion test. If a shop steward is not available, an available department employee may be selected to represent the interests of said employee. Such contact shall not, in any way, delay or interfere with the implementation of this policy and its procedure.

DRUG AND ALCOHOL TESTING Procedure

SECTION 15:

PURPOSE

The purpose of this procedure is to delineate the application of the Omnibus Transportation Employee Testing Act under the regulations of the Federal Highway Administration (FHWA).

SECTION 16:

EFFECTIVE DATE

This procedure shall be effective upon date of Council action.

SECTION 17:

ALCOHOL TESTING , CONTROLLED SUBSTANCE COLLECTION, AND LABORATORY SITES

The identity and locations of the alcohol testing, controlled substance collection, and laboratory sites and facilities shall be retained in the Human Resources Division and shall be made immediately available upon request.

SECTION 18:

FORMS OF TESTING

The procedures for each of the forms of testing being conducted by the City are described in Sections 5 through 8 of this Procedure. Inherent to each procedure, at the time of collection and/or testing, the employee is to have in his/her possession an appropriate form of identification. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

SECTION 19:

PRE-EMPLOYMENT TESTING

A. Pre-employment drug/alcohol testing shall be conducted upon the conditional offer of employment. This offer of employment is contingent upon the successful completion of all medical exams and drug/alcohol screenings.

B. Upon completion of the hiring interview the department shall notify the Human Resources Division of its conditional offer of employment to the candidate, and of the candidate's acceptance of this offer. The hiring department shall refer the candidate to the Human Resources Division. The Human Resources Division shall notify the candidate of the types of testing to be conducted, have the candidate complete the appropriate notification forms,

and schedule the candidate for the appropriate testing at the appropriate collection and/or testing site.

C. Upon completion of the drug/alcohol testing, the Human Resources Division shall notify the hiring department of such results.

D. Notification of the results for controlled substance testing shall be provided to the candidate provided the candidate requests the results within 60 days of being notified of the disposition of his/her employment application.

E. The City shall obtain, upon written consent of the employee, information on the employee's alcohol tests with a concentration result of 0.01 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two (2) years from previous employers. This information shall be obtained and reviewed by the City no later than fourteen (14) calendar days after the first time an employee performs safety-sensitive functions. The employee shall not perform any safety-sensitive functions after fourteen (14) calendar days without obtaining the information.

F. As an employer the City is required to verify previous violations of DOT drug and alcohol regulations within the last two years of employment with a DOT regulated agency or employer. An employer must obtain and review the information listed below from any DOT-regulated employer for which the employee performed safety-sensitive functions in the previous two years. The information obtained must include:

1. Information of the employee's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
2. Information of the employee's controlled substance test in which a positive result was indicated.
3. Any refusal to submit to a required alcohol or controlled substance test. (including verified adulterated or substituted drug test results)
4. Other violations of DOT agency drug and alcohol testing regulations.

SECTION 20:

RANDOM TESTING

All covered employees shall be subject to periodic random testing. In accordance with, and subject to modification by the DOT, employees shall be tested at the minimum annual percentage rate

of ten percent (10%) of the average number of employees covered by this policy for random alcohol; and fifty percent (50%) of the average number of employees covered by this policy for random controlled substances.

A. Random generation. Covered employees shall be scheduled for unannounced alcohol and controlled substance tests and selected for testing by utilizing a random number generator. Each employee shall have an equal chance of being tested each time selections are made.

B. Employee notification. On the date the employee is selected for testing, the employee's supervisor shall be notified of the selection. The supervisor shall provide written notification of selection for testing to the employee. The supervisor shall arrange coverage of the employee's duties. The supervisor shall direct the employee to cease the performance of safety-sensitive functions, and to immediately proceed to the appropriate testing and/or collection site.

An employee shall only be tested for alcohol during any period in which he/she is actually performing, ready to perform, immediately available to perform, or just after the employee has ceased performing safety-sensitive functions.

SECTION 21:

REASONABLE SUSPICION TESTING

A. Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform the job safely is reduced.

B. As currently provided in the City's *Drug-Free Workplace Policy and Procedure*, the City may require an employee to submit to an alcohol and/or controlled substance test whenever it has reasonable suspicion to believe that an employee has violated the prohibitions of the *Drug and Alcohol Testing Policy*.

C. Alcohol testing is authorized only if the observations leading to reasonable suspicion are made during, just preceding, or just after the period of the work day that the employee is performing the safety-sensitive functions of his/her position.

D. Any supervisor or manager who has determined reasonable suspicion shall immediately prevent or direct the employee to stop

performing the duties of his/her position, and inform the employee that he/she shall be referred to alcohol/drug testing on such basis.

E. The supervisor or manager shall immediately contact his/her supervisor and the Human Resources Manager with notification of the action taking place, and shall transport the employee to the testing/collection site.

F. The employee shall be immediately transported by the supervisor to the alcohol testing and/or collection site and said test shall be administered within two (2) hours following the determination of reasonable suspicion.

G. The supervisor or manager shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.

H. Any supervisor or manager encountering an employee who refuses to submit to a drug and/or alcohol test shall remind the employee of the requirements and disciplinary consequences of this policy and procedure. The employee's refusal shall be documented in writing. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the supervisor or manager should Remove the employee from safety sensitive service and arrange for the employee to be safely transported home after the employee has undergone alcohol and controlled substance testing.

I. Upon completion of the testing, the supervisor is to contact the Human Resources Manager and report the status of such testing.

SECTION 22:

POST-ACCIDENT TESTING

A. The employee's supervisor or manager shall make a determination to conduct post-accident testing in accordance with the City's drug/alcohol policies immediately after notification of the accident. If a determination is not made and the appropriate test is not administered within two (2) hours following the accident, the employee's supervisor shall immediately provide written documentation to the Human Resources Manager stating the reasons why the test was not promptly administered.

B. Where possible, the supervisor or manager should make every effort under the circumstances surrounding the accident to ensure that the employee, even one who has been permitted to leave or has had to leave the site, is available for a post-accident

test. This, of course, does not mean that necessary medical treatment for injured people should be delayed or that an employee cannot leave the scene of an accident for the period necessary to obtain assistance in responding to the accident, materials to secure the accident site, or necessary emergency medical care. An employee who is seriously injured and cannot consent to provide a specimen within the appropriate time frames of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

C. If a determination is made to conduct post-accident testing, the supervisor or manager shall provide documentation of the accident and as to his/her decision to the Human Resources Manager within one (1) working day of the accident.

D. The employee shall remain readily available for such testing or may be deemed to have refused to submit to testing.

E. The supervisor or manager shall transport the employee to the alcohol testing and/or controlled substance collection site, and if necessary, to the employee's home after completion of the testing and collection.

F. The employee shall be placed upon administrative leave with pay pending the outcome of the test(s).

SECTION 23:

SUBSTANCE ABUSE PROFESSIONAL (SAP) SERVICES

Each employee who engages in conduct prohibited by this Policy and Procedure shall be evaluated by a SAP who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use.

Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by this Policy and Procedure, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.01 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved a controlled substance.

In addition, each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be:

A. evaluated by a SAP to determine that the employee has properly followed any rehabilitation program prescribed under, and

B. subject to unannounced follow-up alcohol and controlled substance tests administered by the City following the employee's return to duty.

SECTION 24:

SPECIFIED PROCEDURES

Specific procedures pertaining to the subjects listed below are attached to this Procedure as indicated:

Alcohol Testing Methodology and Procedures
Controlled Substances Testing Procedure
Controlled Substance Testing Methodology
Test Results
Confidentiality and Recordkeeping

Appendix B
Appendix C
Appendix D
Appendix E
Appendix F

APPENDIX A COVERED EMPLOYEES

Employees in the classifications listed below are covered under the applicable regulations for those employees. Covered employees are:

- A. Those who perform “safety sensitive” functions as defined in the City of Lodi *Drug and Alcohol Testing Policy*.
- B. Maintenance personnel, who perform various repairs to revenue vehicles (including repairs, overhaul and rebuilding)
- C. Employees with a commercial driver’s license that will operate a revenue service, or non-revenue service DOT funded transit vehicle (includes the operation of the Lifts or anyone who assists passengers to assure they are secured in the vehicles).
- D. Drivers operating a revenue service vehicle, including when not in revenue service.

Employees may be included in more than one listing below in accordance to the various regulatory agencies under which their work specification is assigned. All covered employees shall be managed as one pool for testing purposes and shall be tested in accordance with the highest level of testing required.

Federal Motor Carrier Safety Administration (FMCSA). Alcohol testing administered at 10% of the total number of covered employees. Drug test administered to at least 50% of covered employees

(1) Public Works Department Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

Street Division
Street Supervisor
Street Maintenance Worker III
Laborer Maintenance Worker I/II

Water/Wastewater Division

Water/Wastewater Supervisor
Plant and Equipment Mechanic
Water/Wastewater Maintenance Worker III
Laborer/Maintenance Worker I/II

(2) Electric Utility Department
Apprentice Lineman/Linewoman
Electric Lineman/Linewoman
Electric Foreman/Forewoman
Electric Apparatus Mechanic
Utility Equipment Specialist

A covered employee includes regular and part-time/temporary employees in the above listed classifications.

Federal Transit Administration (FTA). Alcohol testing administered at 10% of the total number of covered employees Drug test administered to at least 25% of covered employees.

(1) Public Works Department
Equipment Maintenance Division

Lead Equipment Mechanic
Welder Mechanic
Heavy Equipment Mechanic
Equipment Service Worker
Fleet Services Supervisor

United States Coast Guard (USCG). No alcohol testing required per Coast Guard regulations. Drug test administered to at least 50% of covered employees

Small Vessel Operators

APPENDIX B
ALCOHOL TESTING METHODOLOGY AND PROCEDURES

I. ALCOHOL TESTING METHODOLOGY

- A. Breath Alcohol Technician (BAT): The City or its agent shall only utilize a BAT who meets the stringent training requirements of the DOT or is a law enforcement officer certified to use the EBT that is utilized.
- B. Alcohol Testing Devices: The City or its agent shall only utilize an EBT which meets the DOT requirements.
- C. Quality Assurance Plan (QAP): The City or its agent shall ensure that the EBT shall have a quality assurance plan developed by the manufacturer and that said plan is complied with for each EBT used for alcohol testing.
- D. Alcohol Testing Site: Alcohol testing shall be conducted in a location that affords visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

II. ALCOHOL TESTING PROCEDURES

- A. Preparation for Testing: Prior to being tested, the BAT shall require the employee to provide a photo identification and shall explain the testing procedure to the employee.
- B. Procedures for Screening Test: The following procedures shall be followed:
 - 1. The BAT and the employee shall complete their respective portions of the Breath Alcohol Testing Form from the DOT. Refusal by the employee to sign this form shall be regarded as a refusal to take the test.
 - 2. An individually-sealed mouthpiece shall be opened in view of the employee and attached to the EBT in accordance with the manufacturer's instructions.
 - 3. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
 - 4. a. If the EBT does not meet the DOT requirements, the BAT and the employee shall take the following steps:
 - (1) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing

device, serial number of the testing device, time and quantified result in Step 3 of the form.

- (2) Record the test number, date of the test, name of the BAT, location, and quantified test result in the log book. The employee shall initial the log book entry.
 - b. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - c. If the EBT prints the test results directly on the form, the BAT shall show the employee the result displayed on the EBT.
5.
 - a. In any case in which the result of the screening test is a breath alcohol concentration of less than 0.01, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In that event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 4b or 4c of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test shall be invalid and the City and employee shall be so advised.
 - d. No further testing is authorized. The BAT shall transmit the result of less than 0.01 to the City in a confidential manner, and the City shall receive and store the information so as to ensure that confidentiality is maintained.
6. If the result of the screening test is an alcohol concentration of 0.01 or greater, a confirmation test shall be performed.
7. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form

and log book entry. The BAT will provide the employee with Copy 2 of the form.

C. Procedures for Confirmation Test: The following procedures shall be followed:

1. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow the procedures outlined above in Preparation for Testing.
2. The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This waiting period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e. to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.
3.
 - a. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.
 - b. In all cases, the first three steps of the "Procedures for Screening Test" shall be followed. A new mouthpiece shall be used for the confirmation test.
4. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.

5. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.
6. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.
7.
 - a. If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).
 - b. If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.
8.
 - a. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.
 - b. If the employee does not sign the certification in Step 4 of the form or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
 - c. If a test result printed by the EBT (see paragraph 7a. or 7b. of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test is invalid and the City and employee shall be so advised.
 - d. The BAT shall conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9. a. The BAT shall transmit all results to the City in a confidential manner. The Human Resources Manager or designee shall receive and handle alcohol testing results in a confidential manner. All communications by BATs to the City concerning the alcohol testing results of employees shall be to the designated City representative.

b. Such communication may be in writing, in person, or by telephone or electronic means, but the BAT shall ensure immediate communication to the City of the results that require the City to prevent the employee from performing a safety-sensitive function.

c. If the initial communication is not in writing, the City shall establish a mechanism to verify the identity of the BAT providing the information.

d. If the initial communication is not in writing, the BAT shall follow the initial communication by providing to the City the City's copy of the breath alcohol testing form. The City shall store the information so as to ensure that confidentiality is maintained.

D. Refusals to Test and Uncompleted Tests

1. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the City.
2. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

E. Inability to Provide an Adequate Amount of Breath

1. This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.
2. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the City.
3. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the City.
4. If the employee attempts and fails to provide an adequate amount of breath, the City shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from the MRO concerning the employee's medical ability to provide an adequate amount of breath.

- a. If the MRO determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The MRO shall provide to the City a written statement of the basis for his or her conclusion.
- b. If the MRO, in his or her reasonable medical judgment, is unable to make the determination set forth herein, the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The MRO shall provide a written statement of the basis for his or her conclusion to the City.

F. Invalid Tests. A breath alcohol test shall be invalid under the following circumstances:

1. The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of 0.01 or above obtained on the device since the last valid external calibration check shall be invalid;
2. The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test;
3. The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test;
4. The BAT does not sign the required form;
5. The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;
6. An EBT fails to print a confirmation test result; or
7. On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

APPENDIX C
CONTROLLED SUBSTANCES TESTING PROCEDURE

I. URINE SPECIMEN COLLECTION: The following procedures shall be followed:

- A. The actual collection site shall be a location having an enclosure with which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing. The site shall also have a source of water for washing hands, which, if practicable, shall be external to the enclosure where urination occurs.
- B. The collection site shall be secure.
- C. No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored.
- D. Collection of urine specimens shall allow individual privacy, unless there is reason to believe that an employee may alter or substitute the specimen provided.
- E. For purposes of this section, the following circumstances are the exclusive grounds constituting a reason to believe that the employee may alter or substitute the specimen.
 - 1. The employee has presented a urine specimen that falls outside the normal temperature range 32.5°C - 37.7°C (90.5°F - 99.8°F), and
 - a. The employee declines to provide a measurement of oral body temperature; or
 - b. Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen;
 - 2. The last urine specimen provided by the employee (i.e. on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;
 - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or
 - 4. The employee has previously been determined to have used a controlled substance without medical authorization and the particular test

was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to duty.

- F. A higher-level supervisor of the collection site person, or the Human Resources Manager, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described herein.
- G. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:
 - 1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.
 - 2. When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the City's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection.
 - 3. The collection site person shall ask the employee to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the employee's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The employee may retain his or her wallet.
 - 4. The employee shall be instructed to wash and dry his/her hands prior to urination.
 - 5. After washing hands, the employee shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
 - 6. The employee may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for employee privacy. The collection site person shall provide the employee with a specimen bottle or collection container, if applicable, for this purpose.

7. The collection site person shall note any unusual behavior or appearance on the urine custody and control form.
8. The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection.
9. The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml.
10. If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.
11. If a single specimen bottle is used as a collection container, the collection site person shall pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder (at least 15 ml) in the collection bottle (to be used as the split specimen).
12. Both bottles shall be shipped in a single shipping container, together with copies 1, 2, and the split specimen copy of the chain of custody form, to the laboratory.
13. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested at the employee's expense in a different DHHS-certified laboratory for the presence of the drugs for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.
14. When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.
15. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
16. Action required by this Policy and Procedure as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the rest of the split specimen.

17. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the City, and the employee.
18. Upon receiving the specimen from the employee, the collection site person shall determine if it has at least 30 ml of urine for the primary or single specimen bottle and, an additional 15 ml of urine for the split specimen bottle. If the employee is unable to provide such a quantity of urine, the collection site person shall instruct the employee to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the City so notified. The MRO shall refer the employee for a medical evaluation to develop pertinent information concerning whether the employee's inability to provide a specimen is genuine or constitutes a refusal to test. (In pre-employment testing, if the City does not wish to hire the employee, the MRO is not required to make such a referral). Upon completion of the examination, the MRO shall report his or her conclusions to the City in writing.
19. After the specimen has been provided and submitted to the collection site person, the employee shall be allowed to wash his/her hands.
20. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.
21. A specimen temperature outside the range of 32.5°C - 37.7°C (90.5°F - 99.8°F) constitutes a reason to believe that the employee has altered or substituted the specimen. In such cases, the employee supplying the specimen may volunteer to have his/her oral temperature taken to provide evidence to counter the reason to believe the employee may have altered or substituted the specimen.
22. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminates. Any unusual findings shall be noted on the urine custody and control form.

23. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
24. Whenever there is reason to believe that a particular employee has altered or substituted the specimen as described in paragraph I.E.1., a or b, of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
25. Both the employee being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the employee to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.
26. The collection site person and the employee being tested shall be present at the same time during the procedures outline in paragraphs I.G.19.-22 of this section.
27. The collection site person shall place securely on the bottle an identification label which contains the date, the employee's specimen number, and any other identifying information provided or required by the City. If separate from the label, the tamper-proof seal shall also be applied.
28. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
29. The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.
30. a. The employee shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him/her is in fact the specimen he/she provided.

b. When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the City. The employee may not be required to waive liability with respect to negligence on the part of any person

participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

31. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.
 32. The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.
 33. a. While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his/her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him/her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

b. The collection site person shall not leave the collection site in the interval between the presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the City) a new collection begun.
- H. Observed Collections: A number of situations requiring direct observations exist. These are done to guard against employee attempts to mask the testing process. Observed collections are required in the following circumstances:
1. All return to duty tests;
 2. All followup tests;
 3. Anytime the employee is directed to provide another specimen because the temperature of the original specimen was out of the accepted range of 90°F - 100° F;
 4. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
 5. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

6. Anytime the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;

7. Anytime the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed.

- I. Chain-of-Custody: A chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

APPENDIX D
CONTROLLED SUBSTANCE TESTING METHODOLOGY

I. APPROPRIATE LABORATORY

The City of Lodi shall utilize a DHHS certified laboratory for the processing of all controlled substance tests. The identification of such laboratory may be obtained by contacting the Human Resources Manager.

II. INITIAL TEST

A. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	*300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

*25 ng/ml if immunoassay specific for free morphine.

B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cut off levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

III. CONFIRMATORY TEST

A. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

Marijuana metabolite ¹	15 ng/ml
Cocaine metabolite ²	150 ng/ml
Opiates:	
Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml

Amphetamines:

Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid.

²Benzoyllecgonine.

- B. The City shall use the lowest cut-off levels permitted by the appropriate regulatory agency. These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

IV. REPORTING OF TEST RESULTS

- A. The laboratory shall report test results to the MRO within an average of five (5) working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible laboratory personnel. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the City, and drug testing laboratory specimen identification number (accession number).
- B. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.
- C. The MRO may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the City.
- D. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and City must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.
- E. The laboratory shall send only to the MRO the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the

validity of the test reports, and attached to which shall be a copy of the test report.

- F. The laboratory shall provide to the Human Resources Manager a monthly statistical summary of urinalysis testing of the City's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

1. Initial Testing:
 - a. Number of specimens received;
 - b. Number of specimens reported out; and
 - c. Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamine

2. Confirmatory Testing:
 - a. Number of specimens received for confirmation;
 - b. Number of specimens confirmed positive for:

Marijuana metabolites
Cocaine metabolites
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

Monthly reports shall not include data from which it is reasonably likely that information about individuals' test can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report withheld for the reason, the laboratory will so inform the employer in writing.

- G. Unless otherwise instructed by the City in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

V. SPECIMEN RETENTION

Long-term storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of two (2) years all specimens confirmed positive, in their original labeled specimen bottles. Within this two-year period, the employer may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of two (2) years, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

APPENDIX E TEST RESULTS

I. MEDICAL REVIEW OFFICER (MRO) DUTIES AND QUALIFICATIONS

- A. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of this Policy and Procedure. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. The review shall be performed by the MRO prior to the transmission of the results to the City.
- B. The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. If the MRO finds that the documentation is unsatisfactory or if the information gives reasonable doubt about the lab analysis, the MRO may:
 - 1. Request laboratory records regarding the specimen to see if correct procedures were followed; and/or
 - 2. Require a re-analysis of a specimen for accuracy or validity of the positive result. The MRO is the only one authorized to order a re-analysis of the original sample.

The MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history and any other relevant biomedical information.

II. POSITIVE TEST RESULTS

- A. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the employee an opportunity to discuss the test result with him/her.
- B. The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph II.E. of this section, the MRO shall talk directly with the employee before verifying a test as positive.

- C. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated City official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.
- D. If, after making all reasonable efforts, the designated City official is unable to contact the employee, the City may place the employee on leave without pay.
- E. The MRO may verify a test as positive without having communicated directly with employee about the test in three circumstances:
 - 1. The employee expressly declines the opportunity to discuss the test;
 - 2. The designated City representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO, and more than five (5) days have passed since the date the employee was successfully contacted by the designated City representative; or
 - 3. Other circumstances provided for in DOT agency drug testing regulations.
- F. If a test is verified positive under the circumstances specified in paragraphs II.E.1-3, of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidable prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.
- G. Following verification of a positive test result, the MRO shall refer the employee to the City's employee assistance program and notify the City's Risk Manager of the test results.

III. VERIFICATION FOR OPIATES; REVIEW FOR PRESCRIPTION MEDICATION

- A. Before the MRO verifies a confirmed positive result for opiates, he/she shall determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the City's GC/MS confirmation testing for opiates confirms the presence of 6-monocetylmorphine.)
- B. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the City, and the employee. Employees do not have access to a test of their split specimen following an invalid result.
- C. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

IV. DISCLOSURE OF INFORMATION

- A. Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as part of the testing verification process.
- B. The MRO may disclose such information to the City, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if:
 - 1. An applicable DOT regulation permits or requires such disclosure;

2. In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or
 3. In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his/her safety-sensitive function could pose a significant safety risk.
- C. Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

APPENDIX F
CONFIDENTIALITY AND RECORDKEEPING

I. CONFIDENTIALITY AND ACCESS TO RECORDS

- A. Laboratory reports or test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential medical file that will be securely kept under the control of the Human Resources Manager. The reports or test results shall be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without consent, may also occur when:
 - 1. the information is compelled by law or by judicial or administrative process;
 - 2. the information has been placed at issue in a formal dispute between the City and employee;
 - 3. the information is to be used in administering an employee benefit plan; or
 - 4. the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.
- B. Except as required by law or expressly authorized or required in this section, the City shall not release driver information that is contained in records required to be maintained by this Policy and Procedure.
- C. An employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substances including any records pertaining to his/her alcohol or controlled substances tests. The City shall promptly provide the records requested by the employee.
- D. The City shall make available copies of all results for City alcohol and/or controlled substances testing conducted under the Policy and Procedure and any other information pertaining to the City's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the City.
- E. When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to the City's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

- F. Records shall be made available to a subsequent employer upon receiving a written request from a former employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the former employee's request.
- G. The City may disclose information required to be maintained under this Policy and Procedure pertaining to an employee, the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the City's determination that the employee engaged in conduct prohibited by this Policy and Procedure (including, but not limited to, a workers' compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).
- H. The City shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

II. MAINTENANCE AND RETENTION OF RECORDS

- A. General Requirement: The City shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. Such records will be maintained confidentially and separate from employee personnel files.
- B. Period of Retention: The City shall maintain the records in accordance with the following schedule:
 - 1. Five (5) years. The following records shall be maintained for a minimum of five (5) years:
 - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.01 or greater,
 - b. Records of employee verified positive controlled substances test results,
 - c. Documentation of refusals to take required alcohol and/or controlled substances tests,
 - d. Calibration documentation,
 - e. Employee evaluation and referrals shall be maintained for a minimum of five (5) years, and
 - f. A copy of each annual calendar year summary.

2. Two Years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and training shall maintained for a minimum of two (2) years.
3. One year. Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.01 shall be maintained for a minimum of one (1) year.

C. Types of Records: The following specific records shall be maintained:

1. Records related the collection process:
 - a. Collection logbooks, if used;
 - b. Documents relating to the random selection process;
 - c. Calibration documentation for evidential breath testing devices;
 - d. Documentation of breath alcohol technician training;
 - e. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
 - f. Documents generated in connection with decisions on post-accident tests;
 - g. Documents verifying existence of a medical explanation other inability of a covered employee to provide adequate breath or to provide a urine specimen for testing; and
 - h. Consolidated annual calendar year summaries.
2. Records related to an employee's results:
 - a. The City's copy of the alcohol test form, including the results of the test;
 - b. The City's copy of the controlled substances test chain of custody and control form;
 - c. Documents sent by the MRO to the City;
 - d. Documents related to the refusal of any employee to submit to an alcohol or controlled substances test required by this Policy and Procedure; and
 - e. Documents presented by an employee to dispute the result of an alcohol or controlled substances test administered under this Policy and Procedure.
3. Records related to other violations of this Policy and Procedure.

4. Records related to evaluations:
 - a. Records pertaining to a determination by a substance abuse professional concerning an employee's need for assistance; and
 - b. Records concerning an employee's compliance with recommendations of the substance abuse professional.
5. Records related to education and training:
 - a. Materials on alcohol misuse and controlled substance use awareness, including a copy of the City's Policy of alcohol misuse and controlled substance use;
 - b. Documentation of compliance with the requirement to establish this Policy and Procedure, including the employee's signed receipt of education materials;
 - c. Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; and
 - d. Certification that any training conducted under this part complies with the requirements for such training.
6. Records related to drug testing:
 - a. Agreements with collection site facilities, laboratories, medical review officers, and consortia;
 - b. Names and positions of officials and their role in the City's alcohol and controlled substances testing program(s);
 - c. Monthly laboratory statistical summaries of urinalysis; and
 - d. The City's drug testing policy and procedures.



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing Charter Service for the Listed Annual Events in Accordance with Charter Policy

MEETING DATE: July 15, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing charter service for the annual events listed below should no willing and/or able private provider exist; and authorize the Transportation Manager to post the notices on the Federal Transit Administration Charter Website in accordance with the charter policy to determine if a willing and/or able provider exists (except for up to 80 hours of service for City officials).

BACKGROUND INFORMATION: At the June 18, 2008 meeting, the City Council adopted policies and procedures for charter service. Included in the adopted policy was specific language identifying the procedure for utilizing the City's transit services for charter service. The policy calls for the City's Transportation Manager to post the event on the Federal Transit Administration Charter Website to determine if any other operator is willing and/or able to perform the service. An administrative fee of \$50 per event is charged, should the City provide the service, along with the fully allocated rate. The current fully-allocated rate (contract cost plus maintenance, depreciation, etc.) is \$60 an hour per bus for community events.

The following is a list of annual community events which have previously requested transit charter service:

Sandhill Crane Festival	Parade of Lights
4 th of July Fireworks	Grape Festival
Leadership Lodi Ag Day	Leadership Lodi Government Day
Leadership Lodi Non-Profit Day	Leadership Lodi Education Day
Storm Drain Detectives	ZINFEST
Hutchins Street Square Performances	Assorted City Department and Council Events

In addition, the Transit Division receives requests for use of transit charter services for non-community events to accommodate business groups, tour groups and weddings. Staff follows the same charter procedures above. The administrative fee is \$50 per event and \$75 an hour per bus for non-community event requests. In addition, \$75 per hour is charged for test runs if required by the transit service contractor.

FISCAL IMPACT: All services provided will be charged at the fully-allocated rate. There should not be any fiscal impact on the Transit fund.

FUNDING AVAILABLE: None required. All services will be billed in accordance with the adopted City policy.

F. Wally Sandelin
Public Works Director

Prepared by Paula J. Fernandez, Transportation Manager/Senior Traffic Engineer
FWS/PJF/pmf

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CHARTER SERVICE FOR ANNUAL
EVENTS IN ACCORDANCE WITH THE CITY'S
CHARTER POLICY

=====

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize Charter Service for the following annual events at the City's fully-allocated hourly rate plus a \$50 administrative fee:

Sandhill Crane Festival	Parade of Lights
4 th of July Fireworks	Grape Festival
Leadership Lodi Ag Day	Leadership Lodi Government Day
Leadership Lodi Non-Profit Day	Leadership Lodi Education Day
Storm Drain Detectives	Hutchins Street Square Performances
ZINFEST	Assorted City Department and Council
Events	

And the following events at a rate of \$75 an hour plus a \$50 administrative fee:

Weddings	Tour Groups
Business Groups	

BE IT FURTHER RESOLVED that the Transportation Manager is hereby authorized to post the notices on the Federal Transit Administration Charter Website to determine if a willing and/or able provider exists.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Establishing a Policy Governing the Receipt and Distribution of Tickets and/or Passes

MEETING DATE: July 15, 2009

SUBMITTED BY: City Attorney

RECOMMENDED ACTION: Adopt resolution establishing a policy governing the receipt and distribution of tickets and/or passes.

BACKGROUND INFORMATION: The Fair Political Practices Act governs the distribution of tickets received by an agency as a result of its operation of event venues. Under a recently adopted Fair Political Practices Commission (FPPC) regulation, such tickets must be distributed pursuant to a specific policy adopted by the Council. The regulation defines ticket to include admission to events, shows or performances for entertainment, amusement or recreation obtained from an outside source, acquired pursuant to a contract for use of agency owned property, for an agency controlled event, or purchased by the agency at fair market value.

On limited occasions in the past, the City has received and distributed tickets to City sponsored events, for purposes of industrial trade, marketing, or employee incentives (usually when ticket sales have been weak). The new FPPC regulation now requires that the receipt and distribution of such tickets be governed by a written policy that sets forth the permissible use of covered tickets for public purposes.

If the Council desires to allow the continued receipt and distribution of such tickets for public purposes, it must adopt a policy. The City Attorney's office has drafted the attached policy for the Council's consideration. The proposed policy complies with FPPC Regulation Section 18944.1, and is similar to policies adopted by other cities in California. Alternatively the City could outright prohibit the receipt and distribution of such tickets.

COSTS: None.

FUNDING: n/a

Janice D. Magdich
Deputy City Attorney

Attachments: Resolution
FPPC Regulation §18944.1
Form 802

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
ESTABLISHING A POLICY GOVERNING THE RECEIPT
AND DISTRIBUTION OF TICKETS AND/OR PASSES

=====

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI AS
FOLLOWS:

Section 1. The City Council of the City of Lodi hereby finds, determines and declares
as follows:

- A. From time to time, the City receives tickets or passes to various facilities, events or performances or shows from third party sources, both public and private, which the City distributes to various persons including city employees and officials; and
- B. The Fair Political Practices Commission ("FPPC") has promulgated regulations regarding when disclosure of receipt of these tickets as gifts may be required for those city officials deemed to be who file annual Statements of Economic Interest ("Form 700") under the City's Conflict of Interest Code; and
- C. FPPC Regulations Section 18944.1 permits covered tickets to be distributed to these city officials without being treated as gifts on Form 700 if the City distributes these tickets in accordance with a duly adopted written policy consistent with Section 18944.1; and
- D. The Fair Political Practices Commission ("FPPC") has clearly stated that it recognizes the discretion of the City Council to determine whether the distribution of such tickets serves a legitimate public purpose of the City.

Section 2. Policy Governing the Receipt and Distribution of Tickets and/or Passes.

The following standards shall apply to the distribution by the City of tickets and/or passes for admission to a facility, event, show, or performance for entertainment, amusement, recreation, or similar purposes as defined by the FPPC Regulation Section 18944.1.

- 1. Definitions:
 - a. "Designated Official" shall mean a City public official required by the City's Conflict of Interest Code, as may be amended from time to time, to file a Statement of Economic interest.
 - b. "Ticket" shall mean a ticket and/or pass for admission to a facility, event, show, or performance for entertainment, amusement, recreation, or similar purposes (as defined by FPPC Regulation 18944.1, as amended and interpreted from time to time) that is obtained by the City, a) from an outside source, b) acquired by the City pursuant to a contract for use of City owned property, c) for a City controlled event, or d) purchased by the City at fair market value. This definition shall not include a ticket to an event where

there is no admission fee, or to civic, political, community and/or cultural activities including, but not limited to, employee recognitions, neighborhood events, state of the city addresses and community prayer programs, unless expressly determined otherwise by the FPPC or judicial decision.

- c. "Immediate Family" shall mean spouse and dependent children as set forth in Government Code Section 82029.

2. Purpose of Policy. The purpose of this policy is to ensure that all Tickets provided to the City shall be distributed in accordance with FPPC Regulation 18944.1.

3. Limitations.

- a. This Policy shall only apply to the City's distribution of Tickets to, or at the behest of, a Designated Official.
- b. Tickets provided to a Designated Official as part of their official duties, or tickets provided so that the Designated Official may perform a ceremonial role or function on behalf of the City, shall not be subject to this Policy. These tickets are exempt from any FPPC disclosure or reporting requirements.

4. Public Purpose. The City Council hereby finds and determines, in its sound discretion that the City will accomplish one or more of the following public purposes through distribution of Tickets to Designated Officials, or provided to third persons at the behest of a Designated Official. The list is intended to be illustrative rather than exhaustive of the public purposes that may be served by Designated Officials utilization of Tickets:

- a. Economic, employment and business development on behalf of the City and businesses within the City, including conventions and conferences.
- b. Promotion of City-controlled or sponsored events, activities, or programs, public facilities and resources.
- c. Promotion of tourism within the City and the surrounding area.
- d. Information gathering and education regarding matters of local, regional and statewide concern that affect the City, including enhancing intergovernmental relations through including attendance at events with or by elected and appointed officials from other jurisdictions.
- e. Promoting or showing City appreciation for programs and services rendered by community and other non-profit and charitable resources for the benefit of the community, including artistic and cultural organization and institutions.
- f. Promoting, encouraging and rewarding educational and athletic achievements by students and officials of local and regional educational institutions.

- g. Promotion of City recognition, visibility, and/or profile on a local, state, national or worldwide scale including exchange programs with national and foreign officials and dignitaries.
- h. Promotion of open government by Designated Official appearances, participation and/or availability at business or community events.
- i. Promotion of City landmarks and/or community events.
- j. Marketing promotions highlighting the achievements of local residents and businesses.
- k. Promotion of inter-governmental relations, *i.e.*, cooperation and coordination of resources between the City and other governmental agencies or entities within San Joaquin County.
- l. Attracting and retaining highly qualified employees in City service.
- m. Special recognition or reward of meritorious service by a City employee or for use in a City employee competition or drawing.
- n. Performance of a ceremonial or official function on behalf of the City, including the attendance of the Designated Official's Immediate Family.
- o. Recognition of contributions made to the City by former City Council members and City officials.
- p. Promotion of special events in accordance with any City contract, including those contracts where the City as a form of consideration has required that a certain number of Tickets be made available for City use.
- q. Events sponsored by the City where the City specifically seeks to enhance the City's reputation both locally and regionally by serving as hosts by providing the necessary opportunities to meet and greet visitors, dignitaries, public officials from neighboring jurisdictions, residents of the City, and their guests.

5. City Manager. The City Council hereby delegates the authority to distribute any Tickets in accordance with this policy to the City Manager or his or her designee. In such case where the City Manager desires to obtain a Ticket, the City Council authorizes the City Manager to exercise the City's sole discretion in determining whether the City Manager's use or distribution of tickets and/or passes is in accordance to the terms of this policy.

6. Return of Tickets. Any Designated Official or the Designated Official's Immediately Family may return any Ticket unused to the City for redistribution pursuant to this policy. Under no circumstances may either the Designated Official or the Designated Official's Immediate Family sell or further transfer any Ticket provided under this policy.

7. Transfer Prohibition. The transfer by any Designated Official of any Ticket distributed pursuant to this policy to any other person, except to members of the Designated Official's Immediate Family for their personal use, is prohibited.

8. Policy Limited to Tickets. Pursuant to FPPC Regulation 18944.1(f), this policy applies only to Tickets and is not applicable to any other benefits received as a part of admission, such as food and beverages.

9. Website Posting. This policy shall be prominently posted on the City's website.

10. Website Disclosure. The distribution of any Ticket pursuant to this policy shall be prominently posted on the City website within 30-days after the ticket distribution and shall include all of the information as required under FPPC Regulation 18944.1(d). Any such posting shall use FPPC Form 802 or such alternative form as may be approved or amended from time to time. Such posting shall be for a period of 30-days, unless a specific duration is otherwise provided for by FPPC Regulation.

Section 3. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopted this Resolution.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-____

(Regulations of the Fair Political Practices Commission Title 2, Division 6, California Code of Regulations)

§ 18944.1. Gifts: Tickets or Passes to Events.

For purposes of this regulation "ticket or pass" means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

(a) Ticket or pass provided by source other than official's agency. A ticket or pass provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the agency is not a gift to the official.

(b) Ticket or pass provided to official by official's agency.

(1) When an agency provides a ticket or pass to an official of that agency, the ticket or pass is not subject to the provisions of this regulation, provided that the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income to the official in complying with the provisions of subdivision (d) below.

(2) When an agency provides a ticket or pass to a public official that otherwise meets the definition of gift under Section 82028 and is not exempt under applicable Commission regulations, the official will meet the burden under Section 82028 that equal or greater value has been provided in exchange therefor, provided that all of the following requirements are met:

(A) With respect to a ticket or pass from an outside source provided to an official by the official's agency:

(i) The ticket or pass is not earmarked by the original source for use by the agency official who uses the ticket or pass;

(ii) The agency determines, in its sole discretion, which official may use the ticket or pass.

(iii) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency in accordance with subdivision (c) below.

(B) With respect to a ticket or pass provided by the official's agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below.

(c) Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency that state the public purposes to be accomplished by the agency policy. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:

(1) a provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

(2) a provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency; and

(3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family solely for their personal use.

(d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or pass that is provided to the official under subdivision (b)(1) above, shall be posted, on a form

provided by the Commission, in a prominent fashion on the agency's website, within 30 days after the distribution. If the agency does not maintain a website, the form shall be maintained as a public record, be subject to inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website. The posting shall include the following:

(1) the name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization outside the agency, the agency may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;

(2) a description of the event;

(3) the date of the event;

(4) the face value of the ticket or pass;

(5) the number of tickets or passes provided to each person;

(6) if the ticket or pass is behested, the name of the official who behested the ticket or pass; and

(7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.

(e) The Commission recognizes the discretion of the legislative or governing body of an agency to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.

(f) The provisions of subdivision (b) apply only to the benefits the official receives by the admission and are not applicable to any other benefits the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

HISTORY

1. Renumbering of former section 18726.7 to section 18944.1 with amendment of section heading filed 6-22-94; operative 6-22-94 (Register 94, No. 25).
2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).
3. Amendment of first paragraph and subsections (a)-(b) and (d)-(e) filed 7-25-95; operative 7-25-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 30).
4. Repealer and new section filed 1-8-2009; operative 2-7-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil 010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 2).

**Tickets Provided by
Agency Report**

A Public Document

TICKETS PROVIDED BY
AGENCY REPORT

1. Agency Name

Date Stamp

**California
Form 802**

For Official Use Only

Division, Department, or Region (if applicable)

Street Address

Area Code/Phone Number

E-mail

☐ Amendment (Must explain in Part 5.)

Agency Contact (name and title)

Date of Original Filing: _____
(month, day, year)

2. Event For Which Tickets Were Distributed

Date(s) of Event: ____/____/____ Description of Event: _____

____/____/____ Face Value of Ticket: \$ _____

Agency Event ☐ Yes ☐ No (Identify source of tickets below.)

Name of Outside Source of Ticket(s) Provided to Agency: _____

Number of Tickets Received: _____ Ticket(s) Provided to Agency: ☐ Gratuitously ☐ Pursuant to Contract

3. Agency Official(s) Receiving Ticket(s) (use a continuation sheet for additional names)

Name of Official (Last, First)	Number of Tickets	State Whether the Distribution is Income to the Official or Describe the Public Purpose for the Distribution

4. Individual or Organization Receiving Ticket(s) (Provided at the behest of an agency official.)

Name of Behesting Agency Official: _____

Name of Individual or Organization: _____ Number of Tickets: _____

Description of Organization: _____

Address of Organization: _____
Number and Street City State Zip Code

Purpose for Distribution: (Describe the public purpose for the distribution to the organization.)

5. Verification

I have determined that the distribution of tickets set forth above is in accordance with the provisions of FPPC Regulation 18944.1.

Signature of Agency Head or Designee

Print Name

Title

(month, day, year)

Comment: (Use this space or an attachment for any additional information including amendment explanation.)

Tickets Provided by Agency Report

California
Form **802**

A Public Document

This form is for use by all state and local government agencies to disclose the distribution of tickets or passes that allow admission to facilities, events, shows, or performances for entertainment, amusement, recreational, or similar purposes. The agency must complete Form 802 identifying agency officials who receive tickets or passes from the agency as well as other individuals and organizations that receive tickets or passes at the behest of agency officials. Form 802 must be posted in a prominent fashion on the agency's website.

Gifts of Tickets or Passes to Public Officials

FPPC Regulation 18944.1 sets out the circumstances under which an agency's distribution of tickets or passes to or at the behest of an official in the agency does not result in a gift to the official. (Regulation 18944.1 is available on the FPPC website at www.fppc.ca.gov.) Even though the distribution of tickets or passes to a public official under the regulation is not a gift to the official, the agency must disclose the distribution on Form 802. The official does not have to disclose tickets or passes received or distributed under the regulation on his or her Statement of Economic Interests (Form 700), but tickets or passes received or distributed by the official that do not fall under the regulation may be subject to disclosure on the official's Form 700 and subject to gift limits.

Posting Form 802

The Form 802 must be posted on the agency's website within 30 days after the distribution. If the agency does not maintain a website, the form must be maintained by the agency as a public record, be available for public inspection and copying, and be forwarded to the FPPC for posting on its website.

Part 1. Agency Identification

List the agency's name, address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Event For Which Tickets Were Distributed

Provide the date(s) of the event, a description of the event, and the face value (i.e. the cost to the public) of the ticket or pass. Check the box indicating whether the event was an "agency event" (such as a county fair, or an event for which the agency purchased tickets). If the agency received the tickets from an outside source, identify the source, the number of tickets received, and check the box to identify whether the tickets or passes were provided to the agency:

- Gratuitously; or
- Pursuant to a contract.

Part 3. Agency Official(s) Receiving Ticket(s)

Disclose the name of each agency official that received a ticket or pass and the number of tickets or passes the official received. Also state whether the distribution is income to the official or describe the public purpose for which the official received the tickets or passes.

Part 4. Individual or Organization Receiving Ticket(s)

If tickets or passes were distributed to an individual or organization outside the agency, at the behest of an official of the agency, provide the name of the official. Disclose the name(s) of the individual(s) who received the tickets or passes and the number of tickets or passes provided. If the tickets or passes were provided to an organization, the agency may post the name, address, a description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the name of each individual that received a ticket or pass. Also, describe the public purpose for the distribution to the individual or organization.

Part 5. Verification

The agency head or his or her designee must sign the form.

Privacy Information Notice

Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Government Code Sections 81000-91014 and California Code of Regulations Sections 18109-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal, or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Act Notice, please contact the FPPC.

General Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
(916) 322-5660



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Consent to Continued Representation of City of Lodi and Northern California Power Agency – Lodi Meter Maintenance.

MEETING DATE: July 15, 2009 City Council Meeting

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: That the City Council grant their consent to the continued representation of the City of Lodi and Northern California Power Agency by Meyers Nave for the Lodi Meter Maintenance.

BACKGROUND INFORMATION: Meyers Nave is General Counsel to the Northern California Power Agency. They also represent the City of Lodi on a continuing basis in connection with Land Use and Development issues. Lodi is currently working with NCPA to provide Meter Maintenance Service and Meyers Nave will represent NCPA in drafting the Agreement. Because Meyers Nave's involvement in NCPA is completely unrelated to the other work performed on behalf of the City of Lodi, I see no potential for actual conflict and recommend Council grant me the authority to execute the attached Conflict Waiver.

Approved:

Stephen Schwabauer
City Attorney

FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

APPROVED:

Blair King, City Manager

June 23, 2009

D. Stephen Schwabauer
City Attorney of Lodi
Office of the City Attorney
P.O. Box 3006
Lodi, CA 95241-1910

JUN 25 2009

CITY ATTORNEY'S OFFICE

**Re: *Consent to Continued Representation of City of Lodi and Northern California Power Agency
- Lodi Meter Maintenance***

Dear Steve:

As you are aware, we act as the General Counsel to the Northern California Power Agency ("NCPA"). In that capacity we have been asked by NCPA to provide advice to it regarding reviewing a contract with the City of Lodi ("Lodi") by which NCPA would agree to perform electric meter maintenance. In advising NCPA regarding this contract, there may be matters which create either actual or potential conflicts of interest between the interests of NCPA and those of Lodi, and the interests and objectives of NCPA and Lodi relating to the Lodi Meter Maintenance either are or may become inconsistent with each other. The purpose of this letter is to disclose this relationship and situation to you, and to seek Lodi's informed, written consent to our continued representation of NCPA with respect to the Lodi Meter Maintenance as well as our continued representation of Lodi in the land use and CEQA matters for which we have been retained.

As attorneys, we are governed by specific rules relating to our representation of clients when present or potential conflicts of interest exist. Rules 3-310(B), 3-310(C), and 3-310(E) of the California Rules of Professional Conduct provide as follows:

Rule 3-310(B): A member shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
- (2) The member knows or reasonably should know that:
 - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
 - (b) the previous relationship would substantially affect the member's representation;
or

- (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
- (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

Rule 3-310(C). A member shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

Rule 3-310(E): A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

With regard to Rule 3-310(B), neither we nor, to the best of our actual knowledge, any member of our firm has or has had (i) any legal, business, financial, professional, or personal relationship with any party, witness, person, or entity or (ii) any interest in the subject matter of our representation of NCPA disclosure of which is required by Rule 3-310(B), except for our past and current representation of Lodi, as described above.

With regard to Rule 3-310(C), our presently proposed representation of NCPA in connection with the matter described above will not result in our representing NCPA and Lodi in the same matter. However, it will result in our representing NCPA in the matter first described above at the same time as we are representing Lodi in separate matters. Therefore, and since we have a professional duty of undivided loyalty to each current client, given our current and past representation of Lodi, we need the informed written consent of both NCPA and Lodi before we represent NCPA in the captioned matter.

With reference to Rule 3-310(E), we do not believe that we have obtained any confidential information from Lodi that would be material to the current matter in which we have been asked to represent NCPA. However, Lodi may believe we have or may receive such material confidential information due to the nature of our past and current representation of Lodi. Consequently, before representing NCPA in this current matter, we request the informed written consent of Lodi.

In connection with our proposed representation of NCPA in the matter described above and for purposes of assisting you in determining whether or not to consent to such representation, we hereby inform you that:

- (a) We do not anticipate any foreseeable adverse effects upon NCPA by reason of our past and current representation of Lodi.
- (b) We do not anticipate any foreseeable adverse effects upon Lodi by reason of our representation of NCPA.

We request that Lodi consider this written request carefully. If, after review and consideration of the foregoing, Lodi consents to our representation of NCPA in the captioned matter, please sign the enclosed copy of this letter and return it to me as soon as possible.

Please do not hesitate to call me if you have any questions or concerns about the foregoing.

Very truly yours,



Steven T. Mattas

cc: Conflicts Department

City of Lodi consents to the representation described above.

Dated:

City of Lodi

By:
Its:



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Renewing Line of Credit with Farmers and Merchants Bank (\$3,000,000) at No Cost to the City of Lodi for the Lodi Electric Utility Through June 30, 2010

MEETING DATE: July 15, 2009

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt Resolution renewing Line of Credit with Farmers and Merchants Bank (\$3,000,000) at no cost to the City of Lodi for the Lodi Electric Utility through June 30, 2010.

BACKGROUND INFORMATION: On July 19, 2006, the Lodi Electric Utility secured a short-term line of credit with Farmers and Merchants Bank through June 30, 2007. This has been renewed each subsequent year. The line of credit was not needed during the prior fiscal year; however, extending the line of credit for another year is appropriate in order to provide for emergency cash reserves. Farmers and Merchants Bank provides the City of Lodi with all of its banking services and has approved the line of credit to be used for Electric Utility operations and other emergency needs should they arise through June 30, 2010. If the line of credit is exercised, the loan would be secured with a certificate of deposit with the bank. Securing the repayment of loans in this manner allows for very favorable interest rates.

FISCAL IMPACT: It is anticipated there will be no additional costs for renewing the line of credit with Farmers and Merchants Bank. It is not anticipated the line of credit will be utilized, but if it is, there will be a short term interest cost associated with the amount and for the time the line of credit is utilized.

FUNDING AVAILABLE: The costs for renewing the line of credit are budgeted in the Electric Utility Fund.

Jordan Ayers
Deputy City Manager

JA/ja

cc: City Attorney

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING AND
APPROVING THE EXECUTION AND DELIVERY OF A LOAN
AGREEMENT TO FARMERS & MERCHANTS BANK OF CENTRAL
CALIFORNIA AND THE BORROWING OF FUNDS THEREUNDER

=====

WHEREAS, Farmers & Merchants Bank of Central California (the "Bank") has offered to provide a revolving line of credit to the City of Lodi (the "City") in the amount of three million dollars (\$3,000,000) to be available through June 30, 2010, pursuant to a loan agreement between the City and the Bank (the "Loan Agreement"), which is on file in the City Clerk's Office and incorporated herein by reference; and

WHEREAS, Government Code Sections 53850 et. seq. authorize the City to borrow money by the issuance of temporary notes under the Loan Agreement; and

WHEREAS, in order to make best use of the credit facility provided by the Bank, it is desirable to delegate to the Deputy City Manager the authority to make borrowings under the line of credit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

2. Approval of Loan Agreement. The proposed form of the Loan Agreement between the Bank and the City, including the form of promissory notes to be delivered by the City thereunder, as presented to this meeting, is hereby approved in substantially final form. The City Manager of the City of Lodi is hereby authorized, for and on behalf of the City Council, to execute and deliver to the Bank the Loan Agreement in substantially said form, with such changes therein as such officer, with the advice of the City Attorney, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

3. Delegation of Authority to Make Borrowings under Loan Agreement. The City Council hereby authorizes the Deputy City Manager of the City, for and on behalf of the City Council, to execute and deliver to the Bank promissory notes representing borrowings under the Loan Agreement; provided that such additional borrowings are made in conformance with the terms, conditions, and limitations of the Loan Agreement and the temporary borrowing provisions of Government Code Sections 53850 et. seq., all as determined by the Deputy City Manager. Such promissory notes shall be issued in substantially the form attached to the Loan Agreement as Exhibit B, with interest thereon, determined in accordance with the provisions of the Loan Agreement, with such changes therein as such officer, with the advice of the City Attorney, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

4. Authorization to Execute Documents. City officials and staff are hereby authorized and directed, jointly and severally, to do any and all things and to execute

and deliver any and all documents that they may deem necessary or advisable in order to proceed with the borrowings authorized hereby and otherwise carry out, give effect to, and comply with the terms and intent of this Resolution. Such actions already taken by such officials and staff are hereby ratified, confirmed, and approved.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Setting the Pay Rate for the Interim Fire Chief

MEETING DATE: July 15, 2009

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt resolution setting the pay rate for the Interim Fire Chief.

BACKGROUND INFORMATION: The Fire Chief retired effective June 26, 2009. Kevin Donnelly has been appointed to fulfill the duties of the Chief on an interim basis. It is recommended that the pay for the Interim Fire Chief be set at the level of the Division Chief, inclusive of the incentives that the incumbent received. Base pay for the Interim Fire Chief is recommended at \$11,575.52 per month. In addition, Mr. Donnelly will continue to receive a \$200 quarterly uniform allowance. Consequently, this will result in no pay increase or decrease for the Interim Fire Chief. As a member of the Executive Management team, Mr. Donnelly will be waiving the City provided deferred compensation match along with participating in a monthly furlough during his tenure as the Interim Fire Chief.

FISCAL IMPACT: Costs have been included in the Fire Department budget.

Jordan Ayers
Deputy City Manager

JA/ja

cc:

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL SETTING
THE PAY RATE FOR THE INTERIM FIRE CHIEF

=====

WHEREAS, the Fire Chief retired on June 26, 2009; and

WHEREAS, the City Manager appointed Kevin Donnelly as the Interim Fire Chief effective June 27, 2009; and

WHEREAS, the City Council has not previously established a pay rate for the classification of Interim Fire Chief.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi that the pay rate for the classification of Interim Fire Chief be set at \$11,575.52 per month.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following votes:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set The Public Hearing For August 5, 2009, To Consider The Reallocation Of Available Community Development Block Grant And HOME Program Funding To Eden Housing, Inc For An Affordable Senior Housing Project.

MEETING DATE: July 15, 2009

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Set the Public Hearing for August 5, 2009, to consider the reallocation of available Community Development Block Grant and HOME Program funding to Eden Housing, Inc. for an affordable senior housing project.

BACKGROUND INFORMATION: In 2006, the City Council allocated \$330,000 of our Community Development Block Grant (CDBG) funding toward the acquisition of land for an affordable housing project. Shortly thereafter, we supplemented that 2006 CDBG allocation with a combination of both CDBG and HOME fund program income that had been generated through our existing Housing Assistance Programs that serve low-income homebuyers and homeowners. We currently have a balance of \$1.1 million to use for the acquisition of land for an affordable housing project.

On April 1, 2009, the Council authorized the City Manager to enter into negotiations with Eden Housing, Inc. in regards to an affordable senior housing development located at 2246 Tienda Drive.

In order to accommodate Eden Housing's use of the those funds for land acquisition and pre-development costs, and to further substantiate the commitment of funding to this project for their subsequent applications for funding to the HUD 202 Program and the State Housing and Community Development Department HOME Program, the available funding will be allocated specifically to Eden Housing, Inc.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: CDBG/HOME Program Funding

Konradt Bartlam
Community Development Director

KB/jw

APPROVED: _____
Blair King, City Manager

Comments by the public on non-agenda items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted.

Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Comments by the City Council Members on non-agenda items



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Public Hearing and Adopt Resolution Adjusting Wastewater Rates
MEETING DATE: July 15, 2009
PREPARED BY: Public Works Director

RECOMMENDED ACTION: Conduct a public hearing and adopt resolution adjusting wastewater rates.

BACKGROUND INFORMATION: The Wastewater enterprise fund is operating at a deficit. The existing rate structure no longer covers the cost of operating the utility and servicing the debt incurred to expand and upgrade the White Slough Water Pollution Control Facility (WSWPCF).

Therefore, it is recommended that wastewater rates be increased to provide a positive cash balance, that revenue earmarks be eliminated to make revenue correspond with need, and that the Engineering News Record (ENR) Index replace the Consumer Price Index (CPI) when determining annual cost adjustments. Otherwise, all sub-funds within the enterprise will be exhausted by mid-2011.

Increased regulations and stricter enforcement have required that the City invest \$60 million in improvements to the White Slough Pollution Control Facility. The annual debt service for these plant improvements amount to \$4.1 million a year. In addition to plant improvements, regulations have increased annual operational costs. These factors have produced the following results that have lead to a deficit.

- 1) Annual operating costs have increased faster than the indexed rate of inflation.
- 2) The revenue needed to pay for the principle and interest of Wastewater Improvement bonds is not available. Those bonds were used to expand/upgrade the WSWPCF and to cover a \$7.5 million emergency repair of the wastewater transmission main in 2008.
- 3) Annual revenue has been overestimated by approximately \$1.5 million since 2004.
- 4) One of the accounts from which debt service is paid was not backfilled with any revenue from 1991 to 2004. It needs to be replenished.

To reverse the ongoing operational deficit, the following course of action is proposed:

- 1) Adjust base rates pursuant to the following schedule: 25-percent increase effective July 16, 2009 for FY 2009/10; 20-percent increase for FY 2010/11; 10-percent increase for FY 2011/12; and 5-percent increase for FY 2012/13.
- 2) Adjust rates for inflation using the ENR Index instead of the CPI beginning in FY 2013/14.
- 3) Budget and execute a \$2 million infrastructure project biannually but eliminate the infrastructure line item on utility bills.
- 4) Annually update the utility financial model to confirm the need and amount of future rate adjustments.

The proposed rates are listed in Exhibit A, and the adjusted rates apply to both residential and non-residential customers.

In addition, it is proposed that the City Council at the public hearing:

- 1) Backfill the \$3,955,688 in the Wastewater Capital Reserve Fund to account for the 13 years that expenditures were made without being restored with revenue from any source.

APPROVED: _____
 Blair King, City Manager

- 2) Acknowledge the future plant operations plan requires several new positions to deal with the increasingly complex nature of operating a modern, 8.5-million-gallon-per-day treatment plant. These may include a Compliance Engineer, Plant Equipment Mechanic, Environmental Compliance Inspector, and additional Plant Operators for the City to comply with the requirements of its State-issued discharge permit. Changes to the staffing at WSWPCF will be brought before the Council for action at a future meeting.

This is not a recommendation the Public Works Department takes lightly. Therefore, the department held an outreach campaign to help residents understand the regulatory environment and other issues that result in the recommendation for a rate increase. Not only was additional information placed on the City's website, the Public Works Department held a public workshop on June 16 so the community had the opportunity to discuss this issue one-on-one with staff. Seven guests from the community attended the workshop.

Lodi's wastewater system consists of 186.5 miles of wastewater mains, seven pump stations and the White Slough Water Pollution Control Facility. Many wastewater plants constructed in the 1960s and 1970s, such as the White Slough facility, were built with federal funds through programs designed to reduce water pollution. The State Legislature in 2000 forced the State Water Board to pass regulations to prevent the discharge of pollutants into ground and surface water, but unlike previous decades, federal funding has not been forthcoming to accomplish this goal.

Meanwhile, Lodi has faced increasingly strict standards in the past decade. Now, not only is wastewater clarified (primary treatment) and aerated and further clarified (secondary treatment), it is filtered and disinfected using ultraviolet light (tertiary treatment). In January 2005, Lodi's plant became the first city in San Joaquin County to reach tertiary stage treatment. The City's most recent discharge permit, issued in 2007, imposed stricter requirements on the plant. Even then, that has not stopped a local environmental group from trying to force the State to require Lodi to make even more costly upgrades.

Proposition 218 requires that the City provide a notice of the proposed rate schedule to all wastewater utility customers and property owners 45 days prior to the public hearing. This was accomplished on May 30, 2009, in addition to a notice of public hearing which was published in the Lodi News Sentinel on May 16 and June 20 (certification of these notices is attached to the staff report). In order for the increases to "not take effect" a majority of the property owners/utility customers are required to file opposition to the increase. Property owners/utility customers may file a written and signed protest against the proposed increases with the City Clerk at or before the close of the public hearing. At the public hearing, Council shall hear all protest. The City Clerk shall tabulate the protest and will certify the results to Council following the close of the public hearing. At this time, 123 valid protests have been received. Approximately 35,000 notices were sent to property owners/utility customers within the City.

The need to raise wastewater rates is not unique to Lodi. Neither are the proposed rates. Some cities charge less, others more. Staff will provide additional information to the public at the public hearing.

FISCAL IMPACT: Increased revenues to the wastewater utility which is required to keep up with cost of service increases and mandated costs. Without a rate increase, the General Fund will be required to support the Wastewater fund in order to avoid crippling financial fines and penalties.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

FWS/pmf

Attachments

cc: Steve Mann, Information Services Manager
Charlie Swimley, Water Services Manager

City of Lodi Wastewater Utility
Proposed Wastewater Rates

Exhibit A

	Current Rates			Rates Effective 07/16/2009	Rates Effective 07/16/2010	Rates Effective 07/16/2011	Rates Effective 07/16/2012
	Base	Infr.	Monthly Total	Monthly Total	Monthly Total	Monthly Total	Monthly Total
Residential							
1 BR	\$11.84	\$4.81	\$16.65	\$20.81	\$24.97	\$27.47	\$28.84
2 BR	15.78	6.41	22.19	27.74	33.29	36.62	38.45
3 BR	19.73	8.01	27.74	34.68	41.61	45.78	48.06
4 BR	23.67	9.62	33.29	41.61	49.94	54.93	57.68
5 BR	27.62	11.22	38.84	48.55	58.26	64.09	67.29
6 BR	31.56	12.82	44.38	55.48	66.58	73.24	76.90
7 BR	35.51	14.42	49.93	62.42	74.90	82.40	86.51

Moderate Strength (annual per SSU)	\$266.28	\$332.88	399.48	439.44	461.40
High Strength User:					
Flow (per MG, annual basis)	2,247.10	2,808.88	3,370.66	3,707.73	3,893.12
BOD (per 1,000 lbs., annual basis)	370.83	463.54	556.25	611.88	642.47
SS (per 1,000 lb., annual basis)	231.86	289.83	347.80	382.58	401.71
Grease Inceptor & Septic Holding Tank Waste within City Limits (per 1,000 gal.)	196.35	245.44	294.53	323.98	340.18
Septic (only) Holding Tank Waste Outside City limits (per 1,000 gal.)	416.82	521.03	625.24	687.76	722.15
Disposal to Storm Drain System (per MG)	206.24	257.80	309.36	340.30	357.32
Disposal to Industrial System:		n/a rates adjusted	n/a rates adjusted	n/a rates adjusted	n/a rates adjusted
Flow (per MG, annual basis)	2,218.78	annually per	annually per	annually per	annually per
BOD (per 1,000 lbs., annual basis)	20.34	LMC § 13.12.210	LMC § 13.12.210	LMC § 13.12.210	LMC § 13.12.210
Winery Waste (per 1,000 gal.)	198.82	248.53	298.24	328.06	344.46

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
ADJUSTING WASTEWATER DISPOSAL SERVICE
RATES

=====

WHEREAS, the Council of the City of Lodi finds as follows:

1. The City of Lodi provides wastewater disposal service to its citizens;
2. The City charges customers of this utility a charge to fund the on-going operation and maintenance of the wastewater disposal service;
3. The City Public Works Director and staff have prepared a plan outlining the cost of operating the wastewater disposal service;
4. The Wastewater Enterprise Fund is operating at a deficit and the existing rate structure no longer covers the cost of operating the utility;
5. The City Public Works Director has recommended increases to the current wastewater disposal rates;
6. The City Public Works Director also recommends that the revenue earmarks be eliminated to make revenue correspond with need and that the Engineering News Record (ENR) Index replace the Consumer Price Index (CPI) when determining annual cost adjustments;
7. The Council directed that notice of a hearing thereon be given to the property owners and wastewater disposal utility customers in the City, with such notice to include, among other matters, the information required to be included pursuant to California law;
8. Pursuant to California Constitution, Article XIII C and Government Code 53755, such notice has been mailed to those property owners and account holders, at least 45 days before the hearing, as evidenced by a Certificate of Mailing on file with the City Clerk;
9. The Council also directed that notice of a hearing thereon be given with such notice to include the information required to be included pursuant to Government Code section 54354.5;
10. Such notice has been published once each week for two weeks, in accordance with Government Code section 54354.5, in the Lodi News-Sentinel as evidenced by Proofs of Publication on file with the City Clerk;
11. On July 15, 2009, the City Council conducted said public hearing, at which time the City Council heard all objections and protests to the proposed increased rates;

12. Written protests against the proposed increased rates were not presented by a majority of the property owners and wastewater disposal utility customers; and
13. The proposed wastewater disposal service rates are not discriminatory or excessive, are sufficient under Government Code section 54515, comply with the provisions or covenants of any outstanding revenue bonds of the City payable from the revenues of the enterprise, comply with the provisions of Title 5, Division 2, Chapter 6 of the Government Code, and are in compliance with all other applicable law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Levy of Charges. Pursuant to Sections 13.08.010, 13.12.240, and 13.16.110 of the Lodi Municipal Code, the increased wastewater disposal service rates as attached hereto as Exhibit A are hereby approved.

Section 3. Subsequent Adjustments. As provided by Government Code Section 53756, the rates shown in Exhibit A may be adjusted annually for a period of five years by resolution beginning July of 2010 through July of 2015, with Council approval following a public hearing, in an amount not to exceed the percentage change in the Engineering News Record (ENR) Twenty Cities Annual Average Index or other index as approved by the City Council by resolution. The adjustment shall not be made if it causes rates to exceed the cost of service and Notice of the Adjustment shall be mailed to each account not less than 30 days before the effective date of the adjustment.

Section 4. Effective Date. This resolution shall take effect from and after the date of its passage.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-____

City of Lodi Wastewater Utility
Proposed Wastewater Rates

Exhibit A

	Current Rates			Rates Effective 07/16/2009	Rates Effective 07/16/2010	Rates Effective 07/16/2011	Rates Effective 07/16/2012
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3 BR	19.73	8.01	27.74	34.68	41.61	45.78	48.06
4 BR	23.67	9.62	33.29	41.61	49.94	54.93	57.68
5 BR	27.62	11.22	38.84	48.55	58.26	64.09	67.29
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Flow (per MG, annual basis)	2,218.78	annually per	annually per	annually per	annually per
BOD (per 1,000 lbs., annual basis)	20.34	LMC § 13.12.210	LMC § 13.12.210	LMC § 13.12.210	LMC § 13.12.210
Winery Waste (per 1,000 gal.)	198.82	248.53	298.24	328.06	344.46

CERTIFICATE OF MAILING
NOTICE OF PROPOSED SEWER RATE INCREASE

I, Pamela Farris, Administrative Secretary of the Public Works Department of the City of Lodi, under penalty of perjury, certify as follows:

That for and on behalf of the City Clerk of the City of Lodi, and on May 28, 2009, I caused to be mailed a *Notice of Proposed Sewer Rate Increase* to all sewer service customers of the City of Lodi and all persons owning real property on which these rates and charges are imposed and as are shown on the last equalized assessment roll of San Joaquin County (mailing list on file in the office of the Public Works Department), a copy of which Notice is hereto attached and marked "Exhibit A".

Executed on June 2, 2009.


PAMELA FARRIS



RECEIVED

JUN 02 2009



CITY OF LODI
PUBLIC WORKS DEPARTMENT

June 1, 2009

CERTIFICATE OF MAILING

I, Daniel A. Williams, of Pre-Sort Center of Stockton, Inc., hereby declare that on the following date(s), we processed and mailed for the CITY OF LODI the following:

Date: May 28, 2009

Item Description: Proposed Rate Increase - 218 Notices (Dept. of Public Works)

Number of Pieces: 37,439

Daniel A. Williams 6/1/09

Daniel A. Williams
General Manager
Pre-Sort Center

JUN 02 2009

Final

Postage Summary

CITY OF LODI
PUBLIC WORKS DEPARTMENT

Permit Holder:	PRESORT CENTER 3806 CORONADO AVE # A STOCKTON, CA 95204-2314 Contact: ANGELA (209) 941 - 2467 customer@pre-sort.com	Mailing Agent:	PRESORT CENTER 3806 CORONADO AVE # A STOCKTON, CA 95204-2314 Telephone: (209) 941-2467	Org. For Mailing is Prepared:	CITY OF LODI 125 S HUTCHINS ST LODI, CA 95240-3470 Telephone: (209) 941-2467
Permit Holder's Permit:	Permit Imprint 269	Mailing Agent's Permit:	Permit Imprint 269	Processing Category:	Letters
Post Office Of Mailing:	STOCKTON CA 95213	Mailing Date:	05/28/2009	Weight of Single Piece:	0.0156 lbs.
Total Pieces:	37,439 pcs.	Total Weight:	584.0484 lbs.	Total Postage:	\$ 5,763.77
No of Containers:	1' MM Trays: 37	2' MM Trays: 74	2' EMM Trays:	Flat Trays:	Sacks: Pallets: Other:
Customer Reference ID.:	19389				
Caps Transaction Number:	2009052819035800M1	Comments:			

Part A : Automation Letters

Line Number	Entry Discount	Title	Description	Price	Quantity	Postage
A2	None	3-Digit	Letters 3.3 oz (0.2063 lbs) or less	0.251	699 pcs.	\$ 175.4490
A3	None	AADC	Letters 3.3 oz (0.2063 lbs) or less	0.253	581 pcs.	\$ 146.9930
A4	None	Mixed AADC	Letters 3.3 oz (0.2063 lbs) or less	0.270	885 pcs.	\$ 238.9500
A9	DSCF	5-Digit	Letters 3.3 oz (0.2063 lbs) or less	0.190	2169 pcs.	\$ 412.1100
A10	DSCF	3-Digit	Letters 3.3 oz (0.2063 lbs) or less	0.208	619 pcs.	\$ 128.7520
Part A Postage:						\$ 1,102.2540

Part D : Nonautomation Letters

Line Number	Entry Discount	Title	Description	Price	Quantity	Postage
D2	None	Mixed AADC	Machinable Letters 3.3 oz (0.2063 lbs) or less	0.273	32 pcs.	\$ 8.7360
D5	DSCF	AADC	Machinable Letters 3.3 oz (0.2063 lbs) or less	0.213	335 pcs.	\$ 71.3550
Part D Postage:						\$ 80.0910

Part H : Enhanced Carrier Route Letters

Line Number	Entry Discount	Title	Description	Price	Quantity	Postage
H1	None	Saturation	Letters 3.3 oz (0.2063 lbs) or less	0.182	74 pcs.	\$ 13.4680
H3	None	Basic	Letters 3.3 oz (0.2063 lbs) or less	0.262	456 pcs.	\$ 119.4720
H7	DSCF	Saturation	Letters 3.3 oz (0.2063 lbs) or less	0.139	29337 pcs.	\$ 4,077.8430
H8	DSCF	High Density	Letters 3.3 oz (0.2063 lbs) or less	0.150	1776 pcs.	\$ 266.4000
H9	DSCF	Basic	Letters 3.3 oz (0.2063 lbs) or less	0.219	476 pcs.	\$ 104.2440
Part H Postage:						\$ 4,581.4270
Total Postage From All Parts:						\$ 5,763.7720
Affixed Postage:						\$ 0.00

USPS Use Only

Verification	Request Source	Performance Status	Disposition	Performance Type	Performance Percentage	Additional Postage	Cost Avoidance
eMIR Cursory review		Not Performed	N/A		N/A		
Weigh Entire Mailing	Verification following failure	Performed	N/A	Weigh Verification Error	100%	N/A	N/A
Manual Barcode	Verification not requested by system	Not Performed	N/A		N/A		
Manual Presort	Verification requested by random selection	Performed	N/A	Presort	100%	N/A	N/A
Total:						\$0.00	\$0.00

This mailing has been inspected concerning:

- (1) eligibility for postage prices claimed;
- (2) proper preparation (and presort where required);
- (3) proper completion of postage statement; and
- (4) payment of annual fee (if required).



*A letter to Lodi residents
and property owners from
Wally Sandelin, Lodi Public
Works director.*

Dear fellow ratepayer,

The City of Lodi regularly evaluates its wastewater service needs, the cost of providing those services, and then determines if rates are sufficient to continue providing the service.

Our goal is to provide quality service that protects public health and the environment. How we meet that goal is largely determined by State regulations, but we are committed to efficiently managing our system.

Lodi faces increasingly strict State regulations that determine how we treat and dispose of wastewater. The regulatory changes have forced us to spend millions of ratepayer dollars to upgrade our 43-year-old facility. This is not simply a Lodi problem, but one facing all our neighboring communities.

Unfortunately, as a result of these changes, we are collecting far less in rates than it takes to operate our wastewater plant. This annual shortfall of more than \$2 million requires us to adjust rates greater than the normal inflation index.

In this notice, you'll learn more about the proposed rate increase, which will be phased in over four years beginning July 16, 2009.

These are not rate increases we take lightly. We understand these are difficult economic times for many of our residents and businesses. We wish the State would give us other options, but please be assured we are committed to providing the best service at the lowest possible cost.

Sincerely,

Wally Sandelin
Public Works Director

NOTICE

of Proposed Rate Increase & Public Hearing Date

About Lodi's wastewater treatment plant

Lodi has been collecting and treating wastewater since 1923. In 1966, the City used federal grants to construct the White Slough Water Pollution Control Facility roughly six miles west of the city limits.

Lodi's wastewater system collects, conveys and treats 2.4 billion gallons of wastewater a year. It consists of more than 3,200 manholes and 194 miles of sewer pipes.

Summary of proposed rate increases

July 16, 2009	July 1, 2010	July 1, 2011	July 1, 2012
+25%	+20%	+10%	+5%

Rates also will adjust for inflation based upon
Engineering News Record Index

Costs to operate forced higher

Lodi has spent millions of dollars on its sewage treatment plant in recent years to meet increasingly strict State rules on how the City treats and disposes of wastewater.

In late 2007, Lodi issued more than \$30 million of bonds to fund the most recent man-

dated plant upgrades and pay for an emergency repair of a five-mile stretch of the City's main sewage transmission line. Those costs are not in the current rates.

Even after the rates go into effect, sewer service in Lodi will still be less expensive than in many neighboring communities.

Proposed monthly rate schedule (numbers in dollars)

	Current	7/16/09	7/1/10	7/1/11	7/1/12
Residential					
1 bedroom	16.65	20.81	24.97	27.47	28.84
2 BR	22.19	27.74	33.29	36.62	38.45
3 BR	27.74	34.68	41.61	45.78	48.06
4 BR	33.29	41.61	49.94	54.93	57.68
5 BR	38.84	48.55	58.26	64.09	67.29
6 BR	44.38	55.48	66.58	73.24	76.90
7 BR	49.93	62.42	74.90	82.40	86.51
Commercial					
Moderate strength (annual per SSU)	266.28	332.88	399.48	439.44	461.40
High Strength User:					
Flow (per MG/annual)	2,247.10	2,808.88	3,370.66	3,707.73	3,893.12
BOD per 1,000 lb. annual	370.83	463.54	556.25	611.88	642.47
SS per 1,000 lb. annual	231.86	289.83	347.80	382.58	401.71
Grease Inceptor & Septic Tank Holding Waste within City Limits per 1,000 gal.	196.35	245.44	294.53	323.98	340.18
Septic Holding Tank Waste Outside City/1,000 gal.	416.82	521.03	625.24	687.76	722.15
Disposal to storm drain system (per MG)	206.24	257.80	309.36	340.30	357.32
Winery Waste/1,000 gal.	198.82	248.53	298.24	328.06	344.46

A public workshop on proposed wastewater rate increases will be at 6 p.m. Tuesday, June 16, at Kirst Hall at Hutchins Street Square, 125 S. Hutchins St.

Alternatives to rate increase

Unfortunately, the City of Lodi has few options other than charge ratepayers for the cost of providing sewer service.

Without this proposed increase, the City's wastewater fund will run out of cash in early calendar year 2010.

If that happens, the City would have to do one of the following:

- A) Operate the utility with funds currently used to provide police and fire protection, park maintenance and other public services; or,
- B) Operate the wastewater plant in violation of the State permit, subjecting the City to millions of dollars of potential fines.

Lodi already has spent reserve funds to avoid increases up to now. More than \$7 million spent in 2008 for an emergency repair of the main pipeline connecting Lodi to the treatment plant was not included in rates.

The proposed rates are necessary for Lodi to remain a fiscally sound and viable community.

Proposition 218 notification and hearing process

The Lodi City Council will consider the proposed sewer rate increases at a public hearing at 7 p.m. Wednesday, July 15, 2009, at the Carnegie Forum, 305 W. Pine St., Lodi.

Proposition 218 requires that the City provide a notice of the proposed rate schedule to all property owners forty-five (45) days prior to holding a public hearing. If a majority of the property owners file oppositions to the increase, the increase will not take effect. Property owners and renters who pay their sewer bill may file a written and signed protest against the proposed increases with the City Clerk at or before the close of the public hearing. A protest must contain a description of the property owned sufficient to identify the property (The address or assessor's parcel number is shown on this mailing).

If you own (or rent and pay a sewer bill) on more than one parcel, you may file a single protest but it must identify each parcel you own or rent. If the name on the written protest is not shown on the last equalized assessment roll of San Joaquin County as the owner of the property or on the utility account, the signer of the protest must also submit written evidence of ownership.

The City of Lodi proposes to increase its monthly sewer rates and charges for residential, commercial and industrial users. It is currently proposed that the increases take effect beginning July 16, 2009. In addition, all sewer rates may be increased by an amount up to the percentage increase in the annual average of the Engineering News Record (20 cities average) Index on July 1 of each year from 2010 through 2014 as needed to pay for increased costs of providing sewer services.

At the public hearing, Council shall hear all protests and tabulate the ballots. One written protest per parcel, filed by the

owner or tenant (paying the utility bill) of the parcel shall be counted in calculating a majority protest to a proposed new fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution. If the votes conflict, the City will count the no vote.

Written protests may be mailed to:
City of Lodi
Attn: City Clerk
P.O. Box 3006
Lodi, CA 95241-1910

Written protests may also be delivered in person to the City Clerk, 221 West Pine Street, Lodi, or at the public hearing.

The rate increases are being proposed in order to provide sufficient revenue to pay costs of the City's sewer system.

Specifically, the rates will provide funding for improvements to the wastewater treatment facility to meet State discharge requirements, system replacement and improvements, operations and maintenance, and administrative expenses related to the wastewater system, and to provide funding to meet inflationary costs of operating the utility for the next five years. The new fee was calculated by taking the increased operating costs and assigning each customer the same percentage of that increase as they are currently paying. The proposed flat rates for each classification of property are determined by the estimated cost of providing wastewater collection and treatment service to customers in that classification based upon the wastewater generation characteristics of such property.

If you have any questions about this notice, please call the Public Works Department at 333-6706 between 8 a.m. and 5 p.m., Monday through Friday.

RANDI JOHL, City Clerk
City of Lodi

PRSR STD
U.S. Postage
PAID
Stockton, CA
Permit No. 269

Notice of Proposed
Sewer Rate Increase

City of Lodi
Public Works Dept.
P.O. Box 3006
Lodi, CA 95241





***Please immediately confirm receipt
of this fax by calling 333-6702***

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

**SUBJECT: PUBLIC HEARING TO CONSIDER RESOLUTION ADJUSTING
WASTEWATER RATES**

**PUBLISH DATE: SATURDAY, MAY 16, 2009
SATURDAY, JUNE 20, 2009**


LEGAL AD

TEAR SHEETS WANTED: One (1) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: MAY 11, 2009

**ORDERED BY: RANDI JOHL
CITY CLERK**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

LNS Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)
Phoned to confirm receipt of all pages at _____ (time) JLT _____ MB _____ JMP (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER RESOLUTION ADJUSTING WASTEWATER RATES

On Friday, May 15 2009, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider resolution adjusting wastewater rates (attached and marked as Exhibit A) was posted at the following locations:


Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2009, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: July 15, 2009

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, July 15, 2009**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:


- a) **Resolution adjusting wastewater rates (as identified on the attached Exhibit A).**

Information regarding this item may be obtained in the Public Works Department, 221 West Pine Street, Lodi, (209) 333-6706. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 W. Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk at, or prior to, the public hearing.


At said hearing, any person interested, including any person owning property in the City, may be heard as to whether said charges are discriminatory or excessive, or will not be sufficient under Government Code Section 54515, or will not comply with the provisions or covenants of any outstanding revenue bonds of the City payable from the revenues of the respective enterprise, or will not comply with the provisions of Title 5, Division 2, Part 1, Chapter 6 "The Revenue Bond Law" of the Government Code, or an any other matter related to the proposed charges or their method of adoption.

By Order of the Lodi City Council:


Randi Johl
City Clerk

Dated: April 15, 2009

Approved as to form:


D. Stephen Schwabauer
City Attorney

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL ADJUSTING
WASTEWATER DISPOSAL SERVICE RATES

=====

WHEREAS, the Council of the City of Lodi finds as follows:

1. The City of Lodi provides wastewater disposal service to its citizens;
2. The City charges customers of this utility a charge to fund the on-going operation and maintenance of the wastewater disposal service;
3. The City Public Works Director and staff have prepared a plan outlining the cost of operating the wastewater disposal service;
4. The Wastewater Enterprise Fund is operating at a deficit and the existing rate structure no longer covers the cost of operating the utility;
5. The City Public Works Director has recommended increases to the current wastewater disposal rates;
6. The City Public Works Director also recommends that the revenue earmarks be eliminated to make revenue correspond with need and that the Engineering News Record (ENR) Index replace the Consumer Price Index (CPI) when determining annual cost adjustments;
7. The Council directed that notice of a hearing thereon be given to the property owners and wastewater disposal utility customers in the City, with such notice to include, among other matters, the information required to be included pursuant to California law;
8. Pursuant to California Constitution, Article XIIC and Government Code 53755, such notice has been mailed to those property owners and account holders, at least 45 days before the hearing, as evidenced by a Certificate of Mailing on file with the City Clerk;
9. The Council also directed that notice of a hearing thereon be given with such notice to include the information required to be included pursuant to Government Code section 54354.5;
10. Such notice has been published once each week for two weeks, in accordance with Government Code section 54354.5, in the Lodi News-Sentinel as evidenced by Proofs of Publication on file with the City Clerk;
11. On July 15, 2009, the City Council conducted said public hearing, at which time the City Council heard all objections and protests to the proposed increased rates;
12. Written protests against the proposed increased rates were not presented by a majority of the property owners and wastewater disposal utility customers; and

13. The proposed wastewater disposal service rates are not discriminatory or excessive, are sufficient under Government Code section 54515, comply with the provisions or covenants of any outstanding revenue bonds of the City payable from the revenues of the enterprise, comply with the provisions of Title 5, Division 2, Chapter 6 of the Government Code, and are in compliance with all other applicable law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Levy of Charges. Pursuant to Sections 13.08.010, 13.12.240, and 13.16.110 of the Lodi Municipal Code, the increased wastewater disposal service rates as attached hereto as Exhibit A are hereby approved.

Section 3. Subsequent Adjustments. As provided by Government Code Section 53756, the rates shown in Exhibit A may be adjusted annually for a period of five years by resolution beginning July of 2010 through July of 2015, with Council approval following a public hearing, in an amount not to exceed the percentage change in the Engineering News Record (ENR) Twenty Cities Annual Average Index or other index as approved by the City Council by resolution. The adjustment shall not be made if it causes rates to exceed the cost of service and Notice of the Adjustment shall be mailed to each account not less than 30 days before the effective date of the adjustment.

Section 4. Effective Date. This resolution shall take effect from and after the date of its passage.

Dated: July 15, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

EXHIBIT A

City of Lodi Wastewater Utility Proposed Wastewater Rates

	Current Rates		Rates Effective 07/16/2009		Rates Effective 07/16/2010		Rates Effective 07/16/2011		Rates Effective 07/16/2012	
	Base	Infr.	Monthly Total	Monthly Total	Monthly Total	Monthly Total	Monthly Total	Monthly Total	Monthly Total	Monthly Total
Residential										
1 BR	\$11.84	\$4.81	\$16.65	\$20.81	\$24.97	\$27.47	\$28.84	\$28.84	\$28.84	\$28.84
2 BR	15.78	6.41	22.19	27.74	33.29	36.62	38.45	38.45	38.45	38.45
3 BR	19.73	8.01	27.74	34.68	41.61	45.78	48.06	48.06	48.06	48.06
4 BR	23.67	9.62	33.29	41.61	49.94	54.93	57.68	57.68	57.68	57.68
5 BR	27.62	11.22	38.84	48.55	58.26	64.09	67.29	67.29	67.29	67.29
6 BR	31.56	12.82	44.38	55.48	66.58	73.24	76.90	76.90	76.90	76.90
7 BR	35.51	14.42	49.93	62.42	74.90	82.40	86.51	86.51	86.51	86.51
Moderate Strength (annual per SSU)										
High Strength User:										
Flow (per MG, annual basis)	2,247.10			2,808.88	3,370.66	3,707.73	3,893.12	3,893.12	3,893.12	3,893.12
BOD (per 1,000 lbs., annual basis)	370.83			463.54	556.25	611.88	642.47	642.47	642.47	642.47
SS (per 1,000 lb., annual basis)	231.86			289.83	347.80	382.58	401.71	401.71	401.71	401.71
Grease Inceptor & Septic Holding Tank Waste within City Limits (per 1,000 gal.)	196.35			245.44	294.53	323.98	340.18	340.18	340.18	340.18
Septic (only) Holding Tank Waste Outside City limits (per 1,000 gal.)	416.82			521.03	625.24	687.76	722.15	722.15	722.15	722.15
Disposal to Storm Drain System (per MG)	206.24			257.80	309.36	340.30	357.32	357.32	357.32	357.32
Disposal to Industrial System:				n/a rates adjusted annually per LMC § 13.12.210	n/a rates adjusted annually per LMC § 13.12.210	n/a rates adjusted annually per LMC § 13.12.210	n/a rates adjusted annually per LMC § 13.12.210	n/a rates adjusted annually per LMC § 13.12.210	n/a rates adjusted annually per LMC § 13.12.210	n/a rates adjusted annually per LMC § 13.12.210
Flow (per MG, annual basis)	2,218.78									
BOD (per 1,000 lbs., annual basis)	20.34									
Winery Waste (per 1,000 gal.)	198.82			248.53	298.24	328.06	344.46	344.46	344.46	344.46



CITY OF LODI COUNCIL COMMUNICATION

AGENDA ITEM J-02a

AGENDA TITLE: Appointments to the Greater Lodi Area Youth Commission (Adult Advisors)

MEETING DATE: July 15, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Concur with the Mayor's recommended appointments to the Greater Lodi Area Youth Commission (Adult Advisors).

BACKGROUND INFORMATION: In May 2009, the City Council directed the City Clerk to post for two vacancies on the Greater Lodi Area Youth Commission (Adult Advisors). The Mayor has reviewed the applications and made his selection. It is, therefore, recommended that the City Council concur with the following appointments.

Greater Lodi Area Youth Commission

David Molvik	Term to expire May 31, 2010
Joseph Price	Term to expire May 31, 2011

NOTE: Two applicants (two new applications);
application deadlines 6/8/09 and 6/22/09

Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application. The City Council is requested to direct the City Clerk to make the necessary postings.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Council Direction Requested Regarding Response to the San Joaquin County Board of Supervisors for Armstrong Road Agricultural/Cluster Zoning Classification

MEETING DATE: July 15, 2009 – carried forward from June 3, 2009

PREPARED BY: City Manager

RECOMMENDED ACTION: Council direction requested.

BACKGROUND INFORMATION: In early 2007, a group of property owners south of Lodi, in the area under consideration as a community separator between Lodi and Stockton, presented to the San Joaquin County Board of Supervisors, a proposal referred to as “The Armstrong Road Agricultural/Cluster Zoning Classification.” The property owners submitted the proposal as a compromise response to the long-standing community discussion of maintaining a distinct geographical difference between Stockton and Lodi.

The proposal was intended to provide a low level of development that, over time, would discourage more intense development while simultaneously enhancing agricultural-oriented tourism and direct vertically integrated agricultural marketing. This proposal was seen as a means to boost property owners’ income without forcing farmers to convert all of their land to non-agricultural uses.

The Board of Supervisors received the request and asked County staff to provide additional information, such as population density, uses, infrastructure, and other impacts. The County staff responded that they lacked the time or resources to provide the information and suggested the property owners pay for the cost as any other development applicant would.

In turn, the property owners requested that the City of Lodi provide the County with the funding necessary to conduct the research. Upon further discussion between the City and the County, the County solicited proposals from consultants to research, conduct community outreach, draft proposed language, and comply with CEQA to create a Specific Plan for the Armstrong Road region. The cost, excluding County administrative fees, was under \$500,000.

In November 2008, the City Council authorized a not to exceed amount of \$500,000. Following this action, the Mayor wrote two letters to the Board of Supervisors asking that the County Board of Supervisors take up the request as Lodi had agreed to pay the County’s out-of-pocket expenses.

In April 2009, the item came before the Supervisors with the recommendation that the proposal for an Armstrong Road Specific Plan be treated as a development application for the creation of a Specific Plan and the City or property owners pay all costs associated with review and processing of the application for the proposed land use classification. This recommendation not only added additional costs but required

APPROVED: _____
Blair King, City Manager

that the City obtain written permission from the property owners to act as their “authorized agent.” In other words, just as a private developer, the City will have to gain “site control” (Please see attached letter from San Joaquin County Community Development Department).

Considering the time and difficulty of arriving at this negative leaning decision, staff feels it would be unproductive at this time to continue along the same approach. This option has been discussed with a coalition of property owners and there is agreement.

However, there is no consensus of what the next steps are. The options are as follows:

- 1) Have the property owners ask the Board of Supervisors to consider the proposal as a part of the County's General Plan Update;
- 2) Ask the City obtain information and conduct the research needed for an informed decision of a similar proposal but, as the City would not be taking action, without the costs of CEQA;
- 3) Determine whether site control can be obtained for a smaller area directly south of Lodi; or
- 4) Take no further action and rely upon the representation by the City of Stockton that northerly development will not occur.

Staff is inclined to encourage the Council to think about developing a Scope of Services that would address the many legitimate questions that exist with regard to the Armstrong Road Cluster Proposal and solicit for professional assistance. Such a Scope of Work might include stakeholder interviews, land use inventory, existing conditions report, consensus building, draft specific plan and zoning ordinance. This would allow for an informed debate and perhaps reduce the assumptions and conjecture that currently surround this proposal.

FISCAL IMPACT: On November 19, 2008, the Council directed the City Manager make available a not to exceed amount of \$500,000.

Blair King, City Manager



**SAN JOAQUIN COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT**

1810 E. HAZELTON AVE., STOCKTON, CA 95205-6232
PHONE: 209/468-3121 FAX: 209/468-3163

APR 27 2009
CITY MANAGER'S OFFICE

April 23, 2009

Blair King, City Manager
City of Lodi, City Hall
221 West Pine Street
Lodi, CA 95240

Dear Mr. King:

Re: Armstrong Road Agricultural/Cluster Zoning Classification

On April 21, 2009, the San Joaquin County Board of Supervisors authorized the Community Development Department to send a letter to the City of Lodi clarifying the Board's position that the City of Lodi must submit the necessary applications for the creation of the Specific Plan and preparation of the Environmental Impact Report (EIR) and pay all costs associated with the review and processing of the applications for the creation of the Armstrong Road Agricultural/Cluster Zoning Classification. Two consulting firms submitted adequate proposals for preparation of the Specific Plan and EIR. Mintier Harnish's proposal is for \$483,486.00 and Augustine Planning Associates is for \$366,208.00. As both proposals meet the requirements of the Request for Proposal, the Community Development Department would like to award the contract to Augustine Planning Associates in the event that the City of Lodi elects to go forward with the project. The total cost for the Specific Plan and EIR would be \$488,108.00, based upon the consultant fee plus the County's administrative fees of 26.5% of the cost of the EIR, plus 35% of the cost of the Specific Plan. Enclosed is an application form for the Specific Plan.

Section 9-806.2 (enclosed) of the Development Title states that:

Applications for Specific Plans or Specific Plan Amendments may be initiated by the Board of Supervisors, Planning Commission, Director of Community Development, or the property owner or the property owner's authorized agent.

Since the City of Lodi will be the applicant, the City will serve as the "property owner's authorized agent." When the City submits the fees and application materials, the City also needs to submit documentation in writing from the property owners within the

Letter to Blair King
Armstrong Road Cluster Zone
April 23, 2009
Page2

proposed project area that the City of Lodi is representing them in the application process.

Please contact me if you have any questions. I can be reached at (209) 468-3140.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kerry Sullivan", with a stylized, flowing script.

KERRY SULLIVAN,
DIRECTOR

/eel

Enclosures

c: Board of Supervisors
Manuel Lopez
David Wooten
Mark Myles

File: ClusterZone4-23-09



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Provide Direction Regarding Lease Extension at 100 East Pine Street (Lodi Adopt-A-Child)

MEETING DATE: July 15, 2009

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Provide direction regarding lease extension at 100 East Pine Street (Lodi Adopt-A-Child).

BACKGROUND INFORMATION: The City entered into a lease (copy attached) with the Lodi Adopt-A-Child Foundation on May 28, 2002 for the building located at 100 East Pine Street for the nominal amount of \$1 per year. The lease expires in May of 2012. The lease called for both the City and Adopt-A-Child to make a number of improvements over a period of time. Those improvements have been substantially completed.

Lodi Adopt-A-Child has indicated that the parking lot is badly deteriorated and in need of repair. The estimated cost of the repair is \$9,500. Lodi Adopt-A-Child has proposed that they would re-pave the lot in exchange for an eight (8) year extension of the lease. (Please see attached letter.)

Staff seeks direction from the Council regarding this proposal.

FISCAL IMPACT: Dependent upon direction given.

FUNDING AVAILABLE: Not applicable.

Jordan Ayers
Deputy City Manager

JA/ja

Attachment

APPROVED: _____
Blair King, City Manager



Lodi Adopt-A-Child, Inc.

PO Box 2479

Lodi, CA 95241-2479

(209) 333-1056

Fax: (209) 333-8011

California Corporation # 2033564

Federal Identification # 31-1580643

<http://www.adopt-achild.org>

Helping children one wish at a time

RECEIVED

MAY 21, 2009

CITY MANAGER'S OFFICE



info@adopt-achild.org

Tuesday, May 19, 2009

Blair King
City Manager
City of Lodi
221 W. Pine St.
Lodi, CA 95240

Dear Blair

Lodi Adopt a Child Foundation's lease with the City of Lodi for the property located at 100 E. Pine is due to expire in 2012.

The parking lot is badly deteriorated. We have a bid from A.J. Stephens to pave the lot for \$9,500. The Board of Directors is reluctant to commit to that outlay of funds if we must vacate the site in three years.

We have invested over \$300,000 in the building to date. The building is actively used year round. Our scout troop meets weekly and we are contemplating a program of distributing school clothing on a year round basis.

We request the lease be extended until 2020. If that request is granted we will make the expenditure of funds to repave the parking lot and will continue to keep the facility in good repair and make it available for city-wide purposes that do not interfere with our programs.

Sincerely,

Jerry Glenn, President

LEASE AGREEMENT
FOR USE OF CITY BUILDING
LOCATED AT 100 EAST PINE STREET, LODI, CALIFORNIA
BY
LODI ADOPT-A-CHILD, A NON-PROFIT 501(c)3
COMMUNITY-BASED ORGANIZATION

THIS AGREEMENT, made and entered into this 28th day of May, 2002, by and between the CITY OF LODI, a municipal corporation, hereinafter called "Owner", and LODI ADOPT-A-CHILD FOUNDATION, a non-profit 501(c)3 community-based organization, hereinafter called "Lessee."

1. **PROPERTIES:** That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by said Lessee, said Lessee does hereby lease from said Owner, the City Building located at 100 East Pine Street, Lodi, California for the operation of the Lodi Adopt-A-Child, more particularly described as follows:

Building Location: 100 East Pine Street, Lodi, California, recorded in the Records Office, County of San Joaquin, State of California as Lots 1, 2, and 3 in Block 27 City of Lodi, according to the official Map thereof filed in Volume 2 of Maps, Page 12, San Joaquin County Records.

Building consists of 6,849 square feet with approximately 5,259 square feet of space on the first floor, and 1,480 square feet of basement space, plus 2,184 square feet of parking space, located at the southeast corner of Pine and Main streets.

2. **OPERATION:** This lease is expressly conditioned on the continued operation of Lodi Adopt-A-Child's charitable operations. Should the Owner have any questions as to the Lessee's level of charitable operations after reviewing the State of California's Department of Justice internet web address and/or the Foundation's internet web address, Owner shall put forth the concerns in writing to be reviewed at the next regularly scheduled Foundation Board of Directors meeting which shall answer the concerns to the satisfaction of the Owner in writing within forty-five (45) days of that Board of Directors meeting. In the event that such operations are then determined not to be at a level acceptable to the Owner, City may immediately terminate this lease with thirty (30) days written notice and without further obligation to Lessee.
3. **TERM:** The term of this Agreement shall be for a period of ten (10) years, commencing upon the date first written above, and terminating upon its tenth anniversary. Lease may be extended by mutual agreement, and with City Council approval, for an additional term to be determined by Council.
4. **RENT:** In consideration of said Agreement, Lessee agrees to pay to Owner as rent for the demised premises one dollar (\$1.00) per year for the entire term of this lease, payable in one lump sum, being ten dollars (\$10.00). In the event that this Lease is extended, the rent shall be prepaid as determined as part of the extension. Rent payments shall be directed to the City of Lodi, Attn: Fleet and Facilities Manager, P. O. Box 3006, Lodi, California, 95241-1910, for processing and shall be paid without prior notice or demand.
5. **USE:** The property shall be used solely for the purpose of carrying on the business of the Lodi Adopt-A-Child. Use of the facilities, or any portion thereof, for any other program, person or entity must be preceded by the City Manager's oral or written permission, which the City Manager may withhold in his or her sole and absolute discretion. Lodi Adopt-A-Child will submit

a list of the expected users for each upcoming year, but shall not be limited to only those organizations listed if prior permission is received from the City Manager. Uses other than occasional must be approved by the City Manager.

It is further understood and agreed by Lessee that Lessee must comply with all present and future laws, ordinances, rules, and regulations promulgated by any governmental authority of competent jurisdiction regulating this type of business during the tenancy and any extension thereof. Lessee shall use and occupy said premises in a quiet, lawful, and orderly manner.

6. **SIGNS:** It is agreed that Lessee may post "Hours of Operation" signs. The Fleet and Facilities Manager and the Community Development Department must approve all signs and locations of signs. All signs must meet the requirements of City's Municipal Code, Chapter 17.63. All costs associated with the purchase and installation of signs shall be the responsibility of Lessee.
7. **REMEDIES ON DEFAULT:** Should Lessee fail to pay any part of the rents herein specified at the times or in the manner herein provided, or fail to comply with or perform any other of the terms and provisions of this Agreement on the part of Lessee to be performed or complied with, then, and in that event, Owner may exercise any and all remedies provided by law or equity by reason of such default, including the right, at Owner's option, of terminating this Agreement. In any of such events, Owner shall be entitled to the immediate possession of said premises, and, at its option, may enter into and upon said premises without notice to Lessee and exclude Lessee and all persons and all property therefrom, and by process of law or otherwise take and resume possession of said premises. Each and all of Owner's remedies shall be construed as cumulative and no one of them as exclusive of the other or as exclusive of any remedy provided by law or equity.
8. **RELATIONSHIP OF PARTIES:** It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of Owner. If required by any governmental authority of competent jurisdiction, Lessee shall carry Worker's Compensation Insurance. Lessee shall observe all laws and regulations applicable to employers.
9. **BUILDING MAINTENANCE:** Except for repairs necessitated by acts of God, Lessee is fully responsible for all repairs and maintenance costs associated with running the facility. The Lessee is responsible to see that all building systems are kept in good working condition and properly maintained. The exterior of the building, adjacent sidewalks, and on-site parking lot must be kept clean, neat, and graffiti-free. All landscaped areas must be properly maintained, and any exterior signage must be kept in good repair and working order.

Owner shall install two (2) sidewalk refuse cans, one of which shall be placed on the sidewalk near the front door and one on the west side of the building near its midpoint. Lessee will empty these cans until such time as the City extends sidewalk refuse service to the neighborhood.

Owner shall be responsible for all structural maintenance and repair, except that necessitated by the acts of tenant. Owner shall hire a pest control contractor to eradicate all pest control problems before the inception of the lease. Thereafter, all pest control work shall be performed at the expense of tenant.

10. **TENANT IMPROVEMENTS:** All tenant improvements must be approved by Owner prior to those improvements being made, and must pass all governing agency permitting and licensing requirements. With the exception of any and all building permit fees, which shall be waived by the Owner, Lessee shall perform, at its sole cost and expense, all improvements set forth in Exhibit "A". All such improvements, less any unattached furniture and fixtures, shall become the property of the Owner at the conclusion of the lease agreement. All material containing asbestos will be removed at the Owner's expense, and will be coordinated with Lessee to be performed within forty-five (45) days of the date of this Agreement. Owner agrees to complete

all items listed in Exhibit "B", attached, within ninety (90) days of the date of this Agreement. Subsequent thereto, Lessee may occupy the structure. Thereafter, Lessee agrees to begin its improvements within four (4) months of completion of all items listed in Exhibit "B" and complete the Phase I improvements within eight (8) months thereafter. Lessee shall repair and maintain the parking lot on the premises in compliance with existing laws and regulations.

11. **ROOF REPAIR AND MAINTENANCE:** Owner will replace the roof at its expense. Owner shall further maintain the roof at its expense during the term of this Agreement.
12. **ASSIGNMENT AND SUBLETTING:** Lessee shall not assign, encumber, convey, or otherwise hypothecate this Agreement, in whole or any part, without first obtaining the written consent of Owner, which Owner may withhold in its sole and absolute discretion.
13. **ENTRY BY OWNER/INSPECTION OF PREMISES:** With not less than twenty-four (24) hours written notice to any member of the Board of Directors for Lessee, Owner shall have the right at all reasonable times during the term of this Agreement to enter said premises for the purpose of examining or inspecting the same.
14. **TERMINATION OF AGREEMENT:** This Agreement may be terminated at any time, with or without cause, by Lessee upon thirty (30) days written notice. This Agreement may also be terminated by Owner on the terms set forth in Paragraph 2. Upon termination of this Agreement, Lessee agrees to quit and surrender the premises in a peaceable manner and Owner shall have the right to remove Lessee and all others occupying through or under this Agreement.
15. **ALTERATIONS OR ADDITIONS:** No alterations or additions to the building shall be performed by Lessee without approval of Fleet and Facilities Manager. Any concerns shall be submitted in writing to the City of Lodi, Attn: Fleet and Facilities Manager, P. O. Box 3006, Lodi, CA 95241.
16. **SURRENDER OF PREMISES:** Lessee shall, at the termination of the Agreement hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair, reasonable wear and tear and acts of God or fire excepted.
17. **FEES:** With the exception of any and all building permit fees, which shall be waived by the Owner, Lessee shall pay all license fees, or other fees or taxes, or possessory interest taxes levied by any governmental agency which may be imposed upon the business of Lessee or its sub Lessee conducted upon the premises. To the extent that Lessee is exempt from any of the referenced fees or taxes, it is the obligation of the Lessee to secure the exemption.

If any of the above charges are assessed against the real property, and because of said assessment the Owner pays the same, which Owner will have the right to do regardless of the validity of any such levy, the Lessee, upon demand, will repay to Owner all taxes and other assessments so levied against Owner which are due by the Lessee.

18. **UTILITIES/MISCELLANEOUS COSTS:** Lessee shall be responsible during the term of this Agreement or any extension thereof for all utility costs, including water, sewer, refuse, gas and electricity used upon said premises during the term hereof. Lessee to be responsible for all other costs associated with running the facility, including but not limited to program supplies, transportation, food service, licensing, telephone, security systems, cable television, cleaning and janitorial expenses.

Owner shall install and maintain a security light on the existing utility pole located on the southeast corner of the parking lot at the alley.

19. **MECHANIC'S LIEN:** Lessee agrees to keep said premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material furnished, and Lessee shall not create, or suffer to be created, any lien or encumbrance on said premises.

20. **INDEMNITY/PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:** Lessee agrees to indemnify and save harmless Owner, its officers, agents, and employees from and against all claims of whatever nature arising from any act, omission, or negligence of Lessee or Lessee's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee or Lessee's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Lessee agrees to maintain in full force during the term hereof a policy of public liability insurance under which Lessee is named as insured, and containing an additional named insured endorsement naming Owner, its officers, agents, and employees as an additional insured, and under which the insurer agrees to indemnify and hold Lessee and Owner, its officers, agents, and employees harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Lessee or Lessee's agents or employees. The minimum limits of such insurance shall be \$1,000,000.00 (One Million Dollars). In addition to the additional named insured endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers, agents, and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Owner within ten (10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Agreement, shall apply and be construed as applying to any sub-Lessee of Lessee.

Any cancellation of insurance, or notice of intent thereof, must be forwarded immediately to the City of Lodi, Attn: Risk Manager, P. O. Box 3006, Lodi, CA 95241.

21. **HOLD HARMLESS:** Owner and Lessee hereby agree to save, defend and hold harmless the other for any suit or cause of action arising exclusively from the negligence or alleged negligence of the indemnifying party, its agents, officers and employees, including reasonable attorney's fees.
22. **BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY:** If Lessee should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of its assets or of the premises, and such bankruptcy, insolvency, or receivership proceeding shall not be dismissed within ninety (90) days, then Owner may, without notice or demand, terminate this Agreement and forthwith reenter and repossess the properties, and remove all persons

therefrom, and under no circumstances shall this Agreement be assignable or transferable by operation of law.

23. **ATTORNEY'S FEES:** In each suit brought for the recovery of any rent due hereunder, or for the recovery of the possession of said demised premises, or for the breach, or to restrain the breach of any of the terms, conditions, or covenants of this Agreement, the prevailing party shall be entitled to a reasonable sum as and for attorney's fees therein, the amount of which shall be determined by the court in such suit and added to and become a part of the judgment therein.
24. **WAIVER:** Failure of Owner to insist upon performance of any of the terms or conditions of this Agreement in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Lessee's obligations to such future performance shall continue in full force and effect. The receipt by Owner of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.
25. **ACCEPTANCE OF PREMISES:** Lessee has examined the premises, knows the conditions thereof, and accepts possession thereof in their condition.
26. **CONTRACT:** This written Agreement constitutes the entire contract between Lessee and Owner, and no representation or agreement, unless expressed herein, shall be binding on Lessee or Owner.

IN WITNESS WHEREOF, Owner and Lessee have executed this Agreement on the date and year first above written.

CITY OF LODI, a municipal corporation
hereinabove called "Owner"

By



H. DIXON FLYNN, City Manager

LODI ADOPT-A-CHILD FOUNDATION,
a nonprofit 501(c)3 community-based
organization hereinabove called "Lessee"

By


DENNIS E. LEWIS, President

Attest:


SUSAN J. BLACKSTON, City Clerk

Approved as to Form:

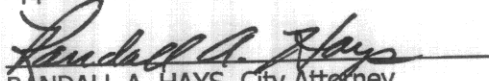

RANDALL A. HAYS, City Attorney

Exhibit "A"

FIVE-YEAR PROPOSAL OF REPAIRS

Lodi Adopt-A-Child
Dennis Lewis, President

April 29, 2002,

RE: 100 East Pine Street, Lodi

The following is the Foundation's plan to repair the building over the next five (5) years.

Phase I -- Year ONE

see 5/2/02

- 1.) Install HVAC- west side only
- 2.) Windows- 1/4" pane.
- 3.) Electrical- west side only-- lights, wiring for 3 ceiling fans and install
- 4.) Plumbing- all areas
- 5.) Flooring- (1) restroom sheet linoleum w/6" coved and welded seams, if needed.
Carpet, mid-grade commercial w/pad, float 2 areas in floor to level.
6. Painting
7. Acoustic ceiling west side continue, repair existing.
8. Remove 2 glass doors and frames on west side. Frame in and stucco each.
9. Paint entire exterior of building
10. Remove compressor- evacuate system and remove.
11. Demo walls, west side false header arch, west restroom, west wood room.
12. Drywall repair- replace sheetrock in west rear office and install sheetrock and sound board.
13. Replace (7) doors, jambs, locksets, (6) interior, and (1) exterior
14. Screen door (storm door style) at east exterior exit.
15. Exterior roof eave add 2 triple-vein lights, repair and install bulbs on soffit lights under eave.
16. Remove existing restaurant sign from roof.
17. Skim texture over 1 tile column at north side.
18. Plug 2 wall AC holes with plywood.
19. Plug (1) mail slot
20. Install (6) pieces of L-trim on stucco edge at exterior doors
21. Remove torn canopy above west entrance.
22. Remove all exterior wall signage
23. Remove bars from all exterior windows
24. Exterior stucco patches
25. Remove curly designs from roof gables
26. Remove metal siding from exterior window openings, one will have exposed window and the other two will have shiplap exterior siding.
27. Pour back concrete after drain removal

Estimated cost of above repairs: **\$95,970.00**

Note: Please see attached "Specifications" for material specs.

Exhibit "A"

FIVE YEAR PROPOSAL OF REPAIRS

Lodi Adopt A Child
Dennis Lewis, President

MAY 27, 2002

RE: 100 E. Pine St, Lodi

The following is the Foundation's plan to repair the Shanghai Restaurant over the next five (5) years.

Phase I -- Year ONE

- 1.) Install HVAC- West side only
- 2.) Windows- 1/4 " Pane.
- 3.) Electrical- West side only-- lights, wiring for 3 ceiling fans and install
- 4.) Plumbing- all areas
- DEL 5.) Flooring- ~~(4)~~ (3) Restroom sheet Linoleum w/6" covered & welded seams if needed.
Carpet mid grade commercial w/pad, float 2 areas in floor to level.
- 6.) Painting
- 7.) Acoustic ceiling west side continue, repair existing .
- 8.) Remove 2 glass doors and frames on Westside. Frame in and stucco each.
- 9.) Paint entire exterior of building
- 10.) Remove compressor- evacuate system and remove.
- 11.) Demo walls, west side false header arch, west restroom, west wood room.
- 12.) Drywall repair- replace sheetrock in west rear office and install sheetrock and sound board.
- 13.) Replace (7) doors, jambs, locksets, (6) interior, and (1) exterior
- 14.) Screen door (storm door style) at east exterior exit.
- 15.) Exterior roof eve add 2 triple vein lights repair and install bulbs on soffit lights under eve.
- 16.) Remove existing restaurant sign off roof.
- 17.) Skim texture over 1 tile columns at north side.
- 18.) Plug 2 wall AC. Holes with plywood.
- 19.) Plug (1) mail slot
- 20.) Install (6) pieces of L-trim on stucco edge at exterior doors
- 21.) Remove torn canopy above west entrance.
- 22.) Remove all exterior wall signage
- 23.) Remove bars from all exterior windows
- 24.) Exterior stucco patches
- 25.) Remove curly designs off roof gables
- 26.) Remove metal siding off exterior window opening, one will have exposed window and the other two will have ship lap exterior siding.
- 27.) Pour back concrete after drain removal
- 28.) **Handicap restrooms- (unisex), framing, drywall, paint, vanity, sink, and handicap toilets. Faucet, accessories, remove old partitions, install new 3' by 6' 8" doors.** DEL

Estimated cost of above repairs: ~~\$95,970.00~~ \$101,970.00 DEL

Note: Please see attached "Specifications" for material specs.

Exhibit "A"

Phase II -- Year TWO

BREAK ROOM

- 1.) Remove 10' wall, build (1) 2' wall and (1) 10' wall, remove 10' wing wall
- 2.) Install (1) sink, single-lever faucet
- 3.) Install Oak cabinets, 11' lowers and 11' uppers
- 4.) Flooring, sheet vinyl with 6" cove

BOARD ROOM (old kitchen)

- 5.) Demo ceramic tile floor
- 6.) Install 3' x 3' carpet squares
- 7.) Painting
- 8.) Suspended ceiling
- 9.) Re-sheetrock all walls
- 10.) HVAC
- 11.) Electrical, lighting, supply wiring and installation for (1) ceiling fan
- 12.) Install cove base

BACK ROOM (near basement stairway)

- 13.) Remove tables
- 14.) Electrical, lights, change surface outlets to flush outlets
- 15.) Float concrete in 1' x 4' area
- 16.) Flooring - VCT
- 17.) Cove base
- 18.) Painting
- 19.) Remove fly fan
- 20.) Drywall repair
- 21.) Doors (6), jambs, trim, locksets
- 22.) Acoustic ceiling
- 23.) HVAC

Estimated cost of above repairs: **\$38,998.00**

Note: Please see attached "Specifications" for material specs.

Exhibit "A"

Phase III -- Year THREE

LARGE ROOM AT FRONT ENTRANCE

- 1.) VCT flooring
- 2.) Cove base
- 3.) Painting
- 4.) Suspended ceiling
- 5.) Electrical, lighting, (3) dedicated outlets
- 6.) HVAC
- 7.) Skim (2) ceramic tile columns and paint
- 8.) Repair accordion door, clean and refinish repaired areas
- 9.) Remove (1) door and frame. Frame in opening and stucco
- 10.) Replace (5) doors: (3) glass, (1) metal, and (1) wood
- 11.) Drywall repairs
- 12.) Remove paneling

Estimated cost of above repairs: **\$45,981.00**

Note: Please see attached "Specifications" for material specs.

Special Notes: The above plans are for three years, which is the goal of the Foundation. However, depending on the needs of the Foundation, Phase II and Phase III may take longer, but in no event will they take longer than five (5) years from the date the Lease Agreement with the City of Lodi is signed and ratified by the Lodi Adopt-A-Child Foundation Board of Directors.

Exhibit "A"

SPECIFICATIONS for EXHIBIT "A"

100 East Pine Street, Lodi, CA

1.) ELECTRICAL

Main office

add circuits or re-circuit to accommodate computers, 12 T-bar fixtures, 3-lamp type

Executive office

add circuits or re-circuit to accommodate computers/printers and install four 4-light fluorescent fixtures and provide a/b switching

Storage room

replace fixtures with five 2-light fluorescent fixtures

Conference room

add six 4-light fluorescent fixtures

Assembly rooms

install twelve 4-lamp fluorescent fixtures

2.) FLOORING

Material and Installation to include

3600 sq. ft. VCT tile (80 cartons)

44 yards Meditcch vinyl

700 Cove Rubber Base

266.66 yards commercial carpet

70 yards commercial pad

Rubber transition molding w/ steel track to VCT

70 sheets 3/8" particleboard

3.) WINDOW REPLACEMENT

Four 8x8 storefront panels with 1/4" Pane.

4.) HVAC

Replace old units on main building with 5-ton, three-phase, gas/electric, 12-SEER packaged units.

Install (1) 3-ton and (1) 2-ton, three-phase, gas/electric, 12-SEER packaged units on west end

Exhibit "B"

City of Lodi Responsibilities

see 5/27/02

The following are the City of Lodi's responsibilities re: 100 West Pine Street.

1. Removal of all asbestos-containing material
2. Lead-based paint evaluation (sealing or removal to be determined between the City and Adopt-A-Child at a later date)
3. Replace the existing roof to the minimum specifications as indicated in the "overall" building repair estimate submitted by Renovate-it Construction, dated November 15, 2001.
4. Install and maintain a security light on the existing utility pole located at the southeast corner of the parking lot at the alley.
5. Structure Evaluation
6. Pest Control Clearance
7. Improve main restrooms to existing handicap standards.
8. Waive any and all permit fees or any fees associated with repairs within the jurisdiction of the City.

Exhibit "B"

City of Lodi Responsibilities

The following are the City of Lodi's Responsibilities re: 100 W. Pine Street.

1. Removal of all asbestos containing material
2. Lead-based paint evaluation (sealing or removal to be determined between the City and Adopt-A-Child at a later date)
3. Replace the existing roof to the minimum specifications as indicated in the "overall" building repair estimate submitted by Renovate-it Construction dated November 15, 2001.
4. Install and maintain a security light on the existing utility pole located at the southeast corner of the parking lot at the alley.
5. Structure Evaluation
6. Pest Control Clearance
- EL* ~~7. Improve main restrooms to existing handicap standards.~~
- DEL* 7. Waive any and all permit fees or any fees associated with repairs, within the jurisdiction of the City.



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Notice of Cost to Grant Two Years Service Credit Under Government Code Section 20903.

MEETING DATE: July 15, 2009

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Consider recommendations relating to notice of cost to grant two years additional service credit for certain classifications of employees under Government Code Section 20903 and Certification of Compliance with Government Code Section 7507.

BACKGROUND INFORMATION: The CalPERS two year additional service credit program, as established under California Government Code Section 20903, allows the City (as part of a budget reduction process) to offer a retirement incentive of two years service credit to employees. The current PERS contract allows the City--with Council approval--to offer the program to Miscellaneous and Fire (sworn) employees.

This specific Resolution limits the two year additional service credit incentive to the current Street Maintenance Worker III classification. Previously, when the original additional service credit program was presented to the Council, Street Maintenance Worker III's were excluded from eligibility. As the budget negotiations unfolded, lay-offs were proposed for the Street Maintenance Worker III's yet they had not had the opportunity to pursue early retirement in lieu of lay-offs.

The program requires that participating employees be at least fifty years of age, have five years of service credit with PERS, and retire within a specified period of time as identified by the City. The intended effect of offering this incentive is an overall reduction in the workforce.

Government Code Section 7507 requires that the costs to provide this benefit as stated in Attachment A be made public at a public meeting at least two weeks prior to the adoption of the Resolution. This communication serves as that public notice.

As stated earlier, the cost of the program must be made public for a minimum of two weeks. At the August 5, 2009 Council meeting, staff will present the resolution adopting the two years service credit purchase for those employees who will be offered this retirement option.

FISCAL IMPACT: The cost of this benefit will be amortized over twenty years and included in the City's CalPERS employer contribution rate beginning in FY 2011-2012.

FUNDING AVAILABLE: Not applicable.

Respectfully submitted,

Dean Gualco, Human Resources Manager

APPROVED: _____
Blair King, City Manager

Estimated Employer Cost

Classification	Name	Annual Pay Rate	Cost Factor	PRSA* Yes or No	No PRSA	COLA 3%, 4%, 5%	Estimated Employer Contributions
Street Maintenance Worker III	Steven Haley	\$ 51,057.68	0.56	Yes		No	\$ 28,592.30
Street Maintenance Worker III	Randall McVinnie	\$ 51,057.68	0.56	Yes		No	\$ 28,592.30
Street Maintenance Worker III	George Barajas	\$ 51,057.68	0.56	Yes		No	\$ 28,592.30
Street Maintenance Worker III	Curtis Gokey	\$ 51,057.68	0.47	Yes		No	\$ 23,997.11

Cost: \$ 109,774.01

Annual Salary Savings \$ 204,230.72

(not including benefits)

Estimated Increase in Employer Contribution:
(Based on \$18,200,077 annual payroll for Misc.)

0.000455552

Actual Annual Cost: \$ 8,198.05



CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$6,890.00).

MEETING DATE: July 15, 2009

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$6,890.00).

BACKGROUND INFORMATION: Listed below is an invoice for services incurred relative to the Environmental Litigation that is currently outstanding and needs to be considered for payment.

Folger Levin & Kahn - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Water Acct.
8002	115618	May-09	People v. M&P	6,022.75
	PL131565	February-09	Esquire Court Reporting	867.25
			City of Lodi v. Donovan	
			Total	\$6,890.00

FISCAL IMPACT: This expense will be paid out of the Water Fund.

FUNDING AVAILABLE: 184010.7323 - \$6,890.00

 D. Stephen Schwabauer, City Attorney

APPROVED: _____

Blair King, City Manager